SUPREME COURT OF THE UNITED STATES.

No. ~~348.~~ 209.

THE UNITED STATES, APPELLANTS,

vs.

THE HEIRS OF J. G. PEÑA, DECEASED, AND OTHERS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

GOVERNMENT PRINTING OFFICE.

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5 In the circuit court of the United States in and for the northern district of California.

THE UNITED STATES
vs.
THE HEIRS OF J. G. PEÑA, deceased, and others. } In equity.

Be it remembered, that on the 19th day of May, in the year of our Lord one thousand eight hundred and sixty, the said United States, by Tully R. Wise, esq., acting U. U. district attorney, filed in the clerk's office of said circuit court the following bill of complaint, to wit:

6 *Bill of complaint.*

In the circuit court of the United States for the districts of California, in and for the northern district.

To the Honorable M. H. McAllister, judge of said court:

Your orator, the United States of America, by Tully R. Wise, the acting district attorney of the United States for said northern district, respectfully represents, that on the 5th day of March, 1852, a petition was presented to the late board of United States commissioners to ascertain and settle private land claims in the State of California by J. Jesus Peña brothers, and Clara Piña, sister of José German Piña, deceased, claiming to be the heir-at-law of the said José German Piña, deceased, praying confirmation of the title to a certain tract of land situated in the county of Sonoma, State of California, known by the name of "Tzabaca," containing four square leagues.

7 In support of said claim the petitioners exhibited a grant made by Governor Manuel Micheltorena on the 14th day of October, 1843, together with the expediente and map therein contained and referred to in said grant; a copy of which grant, duly translated into English, with a traced copy of said map thereto annexed, is herewith filed, marked Exhibit "A," and prayed to be made a part of this bill. They also introduced as a witness one M. G. Vallejo, upon whose favorable report to the prefect the said grant was originally made, in order to prove the boundaries of the tract intended to be conveyed by the grant; a copy of whose evidence is herewith filed, marked Exhibit "B," and prayed to be made a part of this bill. Upon which testimony and other evidence filed in said cause the said commissioners, on the 26th day of June, 1855, entered a decree confirming said claim and defining its boundaries in accordance with the description contained in the said deposition of M. G. Vallejo; a copy of which decree is herewith filed and marked Exhibit "C," and prayed to be taken as a part of this bill.

8 Your orator further shows, that subsequently, on the 1st day of August, 1855, an appeal was taken by the United States from the decision of said board to the United States district court for the northern district of California, as will appear from the record of said cause now on file in the clerk's office of said district court, which will be exhibited in evidence on the trial of this cause.

That on the 9th day of March, 1857, a decree was entered in said court confirming in all its parts the said decree of confirmation of the said commissioners, with a provisio that, if the boundaries described in said grant and decree of confirmation contained a smaller quantity of land than four leagues, the said confirmation should only operate to the extent of such smaller or less quantity; a copy of which said last mentioned decree, marked Exhibit "D," is herewith filed, and prayed to be made a part of this bill. On the 2d day of April, 1857, an order was entered in said district court, under instructions from the Attorney
9 General of the United States in Washington, dismissing said appeal, and authorizing said claimants to proceed under said decree as a final decree; a copy of which said order is herewith filed, marked Exhibit "E," and prayed to be made a part of this bill.

Your orator further represents, that in pursuance of the 13th section of the act of Congress of the 3d March, 1851, creating said
10 board of commissioners, the surveyor general for the State of California, on or about the month of April, 1858, deputed one C. P. Tracy to make a survey and location of the lands described in and embraced by the said decree of confirmation; that under the said authority the said deputy surveyor, Tracy, went on the said premises and commenced the survey, and located a portion of said lands in the valley of "Tzabaca," now known as "Dry Creek," to which valley, and the hills or mountains bounding it on either side, as your orator contends and avers, and as fully appears from the terms of said decrees, the lands confirmed under them were confined and limited.

Your orator further avers, that the said deputy surveyor, Tracy, in violation of his authority and without regard to the limitation and description of the lands confirmed to said claimants by virtue of said decrees, proceeded across a range of hills or mountains that separates the said valley of "Tzabaca" from the neighboring valley of "Russian river," and was in the act of surveying, with a view of
11 including within the limits of the grant so confirmed, a large body of land lying within the said last named valley, of great value, which by the terms of said decrees of confirmation were excluded therefrom; that while he was so engaged in making said survey in the valley of Russian river, he was interrupted by certain settlers in said valley, claiming to hold portions of said land by virtue of the pre-emption laws of the United States, and prevented from continuing or completing his proposed survey of that portion of the land lying in said last mentioned valley. Notwithstanding which, and as your orator is informed and believes, and therefore charges, that the said Tracy, without having actually made or completed the survey upon the ground, made out a plat and reported the same, and returned it to the office of the surveyor general, including therein a large portion

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of the lands situated in said valley of Russian river, a copy of which said plat is herewith filed, marked Exhibit "F," and prayed to be made a part of this bill.

12 Your orator further charges, that the pretended survey purporting to be made by Deputy Surveyor Tracy was illegal and void, so far as it included any portion of the last mentioned lands, in this: first, that it embraced lands excluded from the survey by the terms of the decree of confirmation; and second, said survey was never made or completed on the ground as required by law, but that the plat, and the report of the same, was made out by protraction from imperfect field-notes and vague computations, based upon that portion of the lines of the survey which were actually run and measured.

Your orator further shows, that after the said attempted survey by Deputy Surveyor Tracy, upon representations made to the surveyor general, J. W. Mandeville, of the want of conformity of the said proposed survey to the decrees of confirmation, the said surveyor general deputed Deputy Surveyor J. C. Hays, in the month of

13 July, 1858, to survey and locate the lands confirmed by said decrees, in conformity with the description therein contained, who, in accordance with directions and instructions from the said surveyor general herewith filed, marked Exhibit "G," went upon the premises and made a survey of the same, confining its location to the valley of "Tzabaca" aforesaid, and the adjoining hills or mountains, making the summit of the range of hills separating the said valley of "Tzabaca" aforesaid, from the valley of Russian river, the northeastern boundary of the tract, as required by the said decrees of confirmation. A copy of the plat of said survey hereunto annexed, and marked Exhibit "G," No. 2.

That after the report and return of the deputy surveyor, J. C. Hays, as aforesaid, no further action, as far as your orator knows, was taken by the surveyor general upon the subject until the month of August in the following year, 1859, at which time the said J. W. Mandeville, surveyor general, addressed to R. A. Thompson,

14 esq., who had been employed to assist the United States district attorney in the matter of the location and survey of the said lands, a communication dated the 2d of said month, informing him that, as one of the attorneys for the contestant in the matter of the survey of the Tzabaca rancho, that he would, on the 4th of the then month of August, send to the General Land Office at Washington his opinion in the matter, referring the whole subject to their decision; that shortly after receiving the said communication the said Thompson called upon the said surveyor general, and informed him that it was not the purpose of the government or the parties contestant to contest the survey before the department at Washington, but that when the same shall have been returned to him for his approval, and it should be found, as approved, to embrace any portion of the Russian River valley, that he would, on the part of the government and other parties interested, resist the said location before the United States district court, under the jurisdiction exercised by that

15 tribunal, by virtue of the decision of the Supreme Court of the United States in what is known as the "Fossat" case, for which purpose he requested the said surveyor general, as soon as he should approve the said survey, to notify him of that fact, in order that he might take the necessary steps to bring the matter before the court, which he, the said surveyor general, promised to do; that the said Thompson subsequently made inquiries at the office of the said surveyor general, to ascertain whether they had received any intelligence of the action of the department at Washington upon the subject, and was informed that no information had been received. And your orator further shows, that neither the said district attorney, nor any other person associated with him as counsel in the matter, received any notification of the return and approval of the said survey, or any information upon the subject, until about the 1st day of January, A. D. 1860, when they incidentally learned that a patent had been issued for the said lands on or about the 19th day of November, A. D. 1859, establishing the boundaries in accord-
16 ance with the said pretended survey of the said deputy surveyor, Tracy.

The said Thompson immediately called at the office of the said surveyor general, and was informed that such was the fact, and certain correspondence with the proper department at Washington was exhibited to him, from which it appeared that the plat of said survey had been forwarded to Washington by the mail which left San Francisco on the 5th of August, 1859; that on the 3d of September following, the said survey had been returned to said surveyor general with instructions to approve the same as purporting to have been made by the said Tracy. That on the 5th of October following, the said survey, after having been so approved by the said surveyor general, was again returned by him to the General Land Office in Washington, and that a patent had issued in conformity therewith on the 19th of November following.

And your orator further shows, that all the lands embraced
17 within the boundaries described and contained in said survey and patent, lying within the limits of the Russian River valley, and north and east of a line drawn along the summit of the range of hills separating the said valley from the valley of Tzabacca, as shown in the survey of Deputy Surveyor Hays, are in fact a portion of the public domain, and the property of the United States, and that the pretended survey and location made by the deputy surveyor, Tracy, was erroneous, illegal, and in fraud of the rights of the United States in the premises. That the necessary legal forms and steps to obtain the patent were hurried through with unusual haste and precipitation, without time being allowed for a proper examination and investigation of the subject, and without notice to the acting district attorney, or the counsel employed to assist him in contesting the survey; all of which actings and doings your orator charges are in fraud of the rights of the United States, and operated a surprise upon your orator, by which your orator was pre-
18 vented from showing before the proper tribunal the illegality

of the said survey, and the errors and mistakes contained in said location.

Your orator therefore charges that the said survey and location, as made by the said Surveyor Tracy, as above set out, and in the particulars there specified, was illegally, fraudulently, and corruptly made; that the same is in direct conflict with the terms of the decree of confirmation and with the claim of the claimants, as shown by their own witness before the land commission.

Your orator further charges, that the said claimants, and other parties claiming to be interested in said lands under said grant, and hereinafter prayed to be made parties to this bill, or some one or more of them, had notice and were fully cognizant of the fraudulent, illegal, and corrupt character of the said survey; and that they, or some one
19 or more of them, their agents or attorneys, were aiders, abettors, and participants in procuring and causing to be made the said illegal, fraudulent, and corrupt survey; and that the same is therefore null and void, and of no effect.

Your orator further charges, that the said patent, so far as it includes or purports to relinquish the title of the United States, or confirm to the said claimants the title to any lands in Russian River valley, or north and east of the line running along the summit of the range of hills separating said valley from the valley of Tzabaca, or Dry creek, as above described, is null, void, and of no effect; the said lands being expressly excluded from the limits of said grant by the terms of the decree of confirmation, and the said patent being founded on an illegal, fraudulent, and void survey.

Your orator therefore prays that the said claimants, J. Jesus Piña, Antonio Piña, Francisco Piña, brothers, and Clara Piña, sister, and heirs-at-law of José German Piña, deceased, and William
20 Fitch, husband of the said Clara Piña, together with John B. Frisbie, José Leandro Luco, William H. Patterson, and Bla Piña, claiming to be grantees of the heirs-at-law of the said José German Piña, deceased, or of some one or more of them, by deeds bearing date prior to the issuance of said patent, and who claim an interest in the lands described and included in the same, and lying in the said Russian River valley, as above set out, be made parties defendant to this bill, and that they be required to answer the allegations thereof; and that your honor will render a decree declaring the said patent void to the extent and so far as the descriptions contained therein include lands lying in the valley of Russian river, and north and east of the line running along the summit of the hills separating the said valley from the valley of Tzabaca, as above set forth.

And your orator further shows that the said parties, or some one
21 or more of them, are now offering for sale and seeking to dispose of said lands, or to assign their interest in the same, under and by virtue of the said patent; and that should they be permitted to do so great damage and injury would result to the United States of America, and to the bona fide settlers who have entered upon and occupied portions of said lands by virtue of the pre-

emption laws of the United States, by reason of the cloud that would be thereby cast over the title of the United States, and the hazard and risk which would thereby be incurred of entirely defeating the title of the United States, and depriving them of their just rights in the premises.

Your orator therefore prays that a writ of injunction may issue, enjoining and restraining the said parties, and each and all of them, from selling or disposing of any portion of said lands, as last above described, or from assigning any interest which they may claim or pretend to have under and by virtue of said patent, or in any
22 manner, either by suit or otherwise, interfering with the rights of the United States, or those claiming under the laws of the United States in the said premises, until the further order of this court.

And your orator prays lief to make such other parties as may hereafter be discovered as having an in interest in said premises, under and by virtue of said patent, whenever it may be necessary, and for such other and further relief as to the court may seem just, right, and proper, and the circumstances of the case may require.

And your orator will ever pray, &c.

TULLY R. WISE,
Acting U. S. Dist. Att'y.

Endorsed: Filed May 19, 1860.

CUTLER McALLISTER, *Clerk.*

23 *Subpœna.*

UNITED STATES OF AMERICA.

Circuit court United States for the districts of California.—In equity.

The President of the United States, greeting, to J. Jesus Piña, Antonio Piña, Francisco Piña, Clara Piña, William Fitch, John B. Frisbie, José Leandro Luco, William H. Patterson, and Blas Piña:

You are hereby commanded that you be and appear in said circuit court of the United States aforesaid, at the court-room in San Francisco, on first Monday of July next, to answer a bill of complaint exhibited against you in said court by the United States
24 of America, and to do and receive what the said court shall have considered in that behalf. And this you are not to omit under the penalty of five thousand dollars.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, this 21st day of May, in the year of our Lord one thousand eight hundred and sixty, and of our independence the 84th.

[SEAL.] CUTLER McALLISTER, *Clerk.*

Memorandum pursuant to rule 12, *Supreme Court U. S.*

You are hereby required to enter your appearance in the above suit on or before the first Monday of July next, at the clerk's office

of said court, pursuant to said bill; otherwise the said bill will be taken pro confesso.

25 Endorsed: Filed April 29, 1861.
CUTLER McALLISTER, *Clerk.*

26 *Exhibit "A."*

Stamp fourth.—Two reales.

Provisionally authorized by the maritime custom-house of the port of Monterey, in the department of the California, for the year one thousand eight hundred and forty-three.

(Sig'd) MAN'L CASTANARA.
(Signed) MICHELTORENA.

{ Maritime custom house of Monterey. }

Manuel Micheltorena, general of brigade of the Mexican army, governor and commandant general of the department of the Californias.

Whereas citizen German Piña has, for his own personal benefit and that of his family, asked for the land known by the name of "Tzabaca," bounded on the south by Don Henrique Fitch, and on the north, east, and west by the Sierra, the proper measures and examinations having previously been taken, as required by laws and regulations, using the faculties conferred on me, in the name of the Mexican nation, I have granted to him the aforesaid land, declaring to him the ownership of it by these presents, subject to the approbation of the most excellent departmental junta, and to the following conditions:

1st. He may enclose it without prejudice to the cross-roads, roads, and servitudes, enjoy it freely and exclusively, making such use and cultivation of it as he may see fit, but within one year he shall
27 build a house, and it shall be inhabited.

2d. He shall ask the respective magistrate to give him the juridical possession in virtue of this despatch, for which purpose the limits shall be marked out, and in the boundaries, besides the monuments, he shall place some fruit trees, or wild ones of some utility. The magistrate who may give the possession will have it measured according to ordinance, leaving the surplus which may result to the nation for its convenient uses.

3d. The land hereby granted is four leagues, (four sitios de ganado mayor,) little more or less, as explained by the map, which goes with the corresponding espediente.

4th. If he should contravene these conditions he shall lose his right to the land, and it will be denounceable by another.

In consequence, I order that this title being held as firm and valid, note be taken of it in the book of grants of vacant lands, and that it be given to the party interested for his security and other purposes.

Given at Monterey, the 14th of September, one thousand eight hundred and forty-three.

(Signed) MANUEL MICHELTORENA.
(Signed) MANUEL JIMENO, *Secretary.*

Note has been taken of this despatch in the corresponding book, folio first of book second.

(Signed) JIMENO.

28 Endorsed: No. 298, D Tzabaca. Translation of title. Heirs of J. G. Piña.

Filed in office August 5, 1852.

GEO. FISHER, *Secretary.*

Recorded in record of evidence, vol. 19, page 84.

GEO. FISHER, *Secretary.*

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, J. W. Mandeville, surveyor general of the United States for the State of California, and as such having in my office, and in my charge and custody, the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law, do hereby certify that the three (3) preceding and hereunto annexed pages, numbered from one to three (3) inclusive, exhibit a true, full, and correct copy of a document, together with the endorsements thereon, as the same appears on file in case No. 298 on the docket of said board of commissioners.

In testimony whereof, I have hereunto signed my name officially and caused my seal of office to be affixed, at the city of San [L. S.] Francisco, this 27 day of February, 1860.

J. W. MANDEVILLE,
U. S. Surveyor General for California.

Examined and found correct.

R. C. HOPKINS,
Keeper of Archives.

29

30 OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, J. Mandeville, surveyor general of the United States for the State of California, and as such having in my office, and in my charge and custody, a portion of the archives of the former Spanish and Mexican Territory or department of Upper California, as also the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law, do hereby certify that the one preceding and hereunto annexed page of tracing paper, numbered one inclusive, exhibits

a true, full, and correct copy of a portion of an original document entitled "Espediente promovido por el ciudadano José German Piña, en solicitud del parage conocido con el nombre de Tzabaco, No. 312," as the same appears on file among said archives, said portion constituting and being the diseño or map in said document; said diseño or map purporting to represent the land claimed in case No. 298 on the docket of said board of commissioners, and also purporting to be the diseño or map referred to in the grant on file in said case No. 298

In testimony whereof, I have hereunto signed my name
[L. S.] officially, and caused my seal of office to be affixed, at the city of San Francisco, this 25th day of February, 1860.

J. W. MANDEVILLE,
U. S. Surveyor General for California.

Examined and found correct.

R. C. HOPKINS,
Keeper of Archives.

Endorsed: Filed May 21st, 1860.

CUTLER McALLISTER, *Clerk.*

31 *Exhibit B.—Case No.* 298.

UNITED STATES LAND COMMISSION,
San Francisco, Jan'y 30, 1854.

On this day, before Commissioner R. Aug. Thompson, came Mariano G. Vallejo, a witness in behalf of claimants, heirs of J. G. Piña, case No. 298, who, after being duly sworn, deposed as follows, his evidence being interpreted by the secretary.

Present: Claimant att'y, and United States ass'te law agent.

Witness states his name is Mariano G. Vallejo; his age, forty-six; and residence, Sonoma, California.

Question by claimant's att'y. Do you know the rancho
32 called Tzabaco, claimed in this case? If so, describe the boundaries of it, with reference to the map contained in the traced copy of the espediente filed in this case.

Answer. I am well acquainted with said rancho. It lies between the two ranges of hills, embracing the cañada or valley formed by the stream running through it, which is called Tzabaco. It bounds on the southeast by the rancho of the late Captain Fitch; that line extends from hill to hill, and is one league in length; from that line the rancho extends up the valley to its head, being four leagues in length by one in breadth. The valley described on the map as the Rio Grande, lying northwest of said rancho, is not included in it, the boundary running along the inner range of hills.

Question by same. Examine your former deposition filed
33 in this case, and state if you know of any other heirs of J. German Peña except those named in said deposition.

Answer. I do recollect another who was omitted in said deposition;

his name is Piña; he is a brother of said J. German Piña. The brothers and sisters of the said J. German Piña are now in the possession and occupancy of said rancho.

M. G. VALLEJO.

Sworn to and subscribed before me, Jan'y 30th, 1854.

R. AUG. THOMPSON, *Com'r.*

Endorsed: No. 298. Heirs of J. G. Piña. Tzabaca. Deposition of Mariano G. Vallejo, taken before Com'r R. Aug. Thompson. Filed in office Jan'y 30th, 1854.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 3, p. 673.

GEO. FISHER, *Sec'y.*

34 OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, J. W. Manderville, surveyor general of the United States for the State of California, and as such having in my office and in my charge and custody the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law, do hereby certify that the three preceding and hereunto annexed pages, numbered from one to three, inclusive, exhibit a true, full, and correct copy of an original document, together with the endorsements thereon, as the same appears on file in case No. 298 on the docket of said board of commissioners.

[SEAL.] In witness whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San Francisco, this 27th day of February, 1860.

35 J. W. MANDERVILLE,
U. S. Surveyor General for California.

Examined, and found correct.

R. C. HOPKINS,
Keeper of Archives.

Endorsed: Filed May 21st, 1860.

CUTLER McALLISTER, *Clerk.*

36 *Exhibit C.*

HEIRS OF J. GERMAN PIÑA *vs.* THE UNITED STATES. } No. 298.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the petitioner is valid, and it is therefore decreed that the same be confirmed.

The land of which confirmation is made is situated in the county of Mendocino, and is known by the name of "Tzabaco," and is bounded on the southeast by the lands of Henrique Fitch; and the north, east,

and west by the sierra, being located in the valley through
37 which flows the stream known by the name of "Tzabaco;" running up the same, and bounded by the hills on each side, to the extent of four square leagues, as described in the grant and shown by the map contained in the espediente, to both of which reference is made for a more particular description.

R. AUG. THOMPSON,
S. B. FARWELL,
Commissioners.

Endorsed: No. 298. Heirs of J. G. Piña. "Tzabaco." Decree of confirmation. Filed in office June 26th, 1855.

GEO. FISHER, *Sec'y.*

Recorded in record of decisions, vol. 3, page 95.

GEO. FISHER, *Sec'y.*

38 OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, J. W. Manderville, surveyor general of the United States for the State of California, and as such having in my office and in my charge and custody the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law, do hereby certify that the two (2) preceding and hereunto annexed pages, numbered from one to two (2,) inclusive, exhibit a true, full, and correct copy of an original document, together with the endorsements thereon, as the same appears on file in case No. 298 on the docket on said board of commissioners.

In testimony whereof, I have hereunto signed my name officially,
[SEAL.] and caused my seal of office to be affixed, at the city of San Francisco, this 27th day of February, 1860.

J. W. MANDERVILLE,
U. S. Surveyor General for California.

Examined and found correct.

R. C. HOPKINS,
Keeper of Archives.

Endorsed: Filed May 21st, 1860.

CUTLER McALLISTER, *Clerk.*

39 *Exhibits D and E.—Exhibit D.*

In the United States district court for the northern district of California.

THE UNITED STATES, app'l'ts, *vs.* HEIRS OF J. G. PEÑA. } No. 374.—"Tzabaco," 4 square leagues.

SONOMA COUNTY, STATED TERM, *March* 9, 1857.

On appeal from the final decision of the board of commissioners to ascertain and settle private land claims in the State of California.

Decree.

This cause came on to be heard at a stated term of the
40 court on appeal from the final decision of the board of commissioners to ascertain and settle the private land claims in the State of California, under the act of Congress approved on the 3d of March, A. D. 1851, upon the transcript of the proceedings and decision of the said board of commissioners, and the papers and evidence on which the said decision was founded; and it appearing to the court that the said transcript has been duly filed according to law, and counsel for the respective parties having been heard, it is by the court hereby ordered, adjudged, and decreed that the said decision be, and the same is hereby, in all things affirmed; and it is likewise further ordered, adjudged, and decreed that the claim of the appellees is a good and valid claim, and that the said claim be, and the same is hereby, confirmed to the extent and quantity of four square leagues, being the same land described in the grant, and of which the possession was proved to have been long enjoyed:
41 provided that the said quantity of four square leagues now confirmed to the claimants be contained within the boundaries called for within the said grant and the map to which the grant refers; and if there be less than the quantity within the said boundaries, then we confirm to the claimants that less quantity.

OGDEN HOFFMAN,
U. S. Dist. Judge.

This decree is correct.

WM. BLANDING, *Dist. Att'y.*

Endorsed: Filed March 9, 1857.

JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy.*

42 *Exhibit E.*

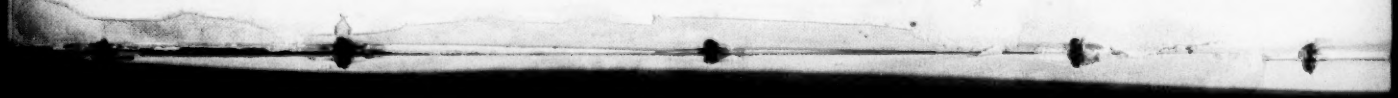
At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Thursday, the second day of April, A. D. 1857.

Present: Hon. Ogden Hoffman, dist. judge.

THE UNITED STATES
vs.
HEIRS OF J. G. PEÑA. } D. C. 374.—L. C. 298.

The Attorney General of the United States having given no-
43 tice that appeal will not be prosecuted in this case, and a stipulation to that effect having been entered into by the U. S. attorney—

On motion of the district attorney, it is ordered, adjudged, and de-



creed that claimants have leave to proceed under the decree of this court heretofore rendered in their favor, as under final decree.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed April 2d, 1857.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

I, William H. Chevers, clerk of the district court of the United States for the northern district of California, do hereby certify
44 the foregoing to be full, true, and correct copies of their respective originals now on file and remaining of record in my office.

[SEAL.] Witness my hand and the seal of the said court this 23d day of February, A. D. 1860.

W. H. CHEVERS, *Clerk.*

Endorsed: Filed May 21st, 1860.

CUTLER McALLISTER, *Clerk.*

45 *Exhibit F.*

Endorsed: Filed May 21st, 1860.

CUTLER McALLISTER, *Clerk.*

46 *Exhibit G.*

U. S. SURVEYOR GENERAL'S OFFICE,
San Francisco, Cal., June 31, 1858.

SIR: Whereas, in the claim of the heirs of J. G. Pena to the tract of land hereinafter described, the U. S. district court for the northern district of California has affirmed the decision of the board of land commissioners confirming said claim, and notice having been given by the Attorney General that no appeal will be prosecuted therein, I have thought proper to appoint you my deputy, in this special case, for the execution of the final survey thereof.

The said district court has confirmed said claim to the following effect: "That the claim of the appellee is a good and valid
47 claim, and that the said claim be, and the same is hereby, confirmed to the extent and quantity of four square leagues, being the same land described in the grant, and of which the possession was proved to have been long enjoyed: provided that the said quantity of four square leagues now confirmed to the claimants be contained within the boundaries called for in the said grant, and the map to which the grant refers; and if there be less than that quantity within the said boundaries, then we confirm to the claimants that less quantity."

The U. S. board of land commissioners confirm said claim as follows: "The land of which confirmation is made is situated in the county of Mendocino, and is known by the name of Tzabaco, and is bounded

on the southeast by the rancho of Henrique Fitch; and on the north, east, and west by the sierra, being located in the valley through which flows the stream known by the name of Tzabaco, and bounded by the hills on each side to the extent of four square leagues,
48 as described in the grant and map contained in the expediente."

In the grant referred to the premises are described as "the land known by the name of 'Tzabaco,' bounded on the south by the lands of Henrique Fitch; and on the north, east, and west by the 'serrania,' containing four square leagues, a little more or less, as explained by the map attached to the expediente, the surplus remaining after juridical measurement to revert to the nation."

You will make your survey in accordance with the decree of the court above set forth, and the data therein referred to, locating to the claimant four square leagues in a compact form within the boundaries as set forth in the grant. Herewith I hand you a copy of the map referred to, and an extract from the deposition of M. G. Vallejo before the said commissioners, (marked No. 1.)

For a more particular description of the manner in which you are to proceed in the execution of the work, I refer you to gen-
49 eral instructions to deputy surveyors, dated January, 1858, herewith handed you.

In accordance with instructions from the department at Washington, you are prohibited from receiving any compensation whatever in any way from the claimants of the rancho for surveying the exterior boundaries thereof.

Respectfully, J. W. MANDERVILLE,
U. S. Surveyor General, Cal'a.

JOHN C. HAYS, Esq'r,
U. S. Deputy Surveyor.

Endorsed: Filed May 21st, 1860.
CUTLER McALLISTER, *Clerk.*

(Here follows map, p. 49.)

50 *Exhibit G No. 2.*

Endorsed: Filed May 21st 1860.
CUTLER McALLISTER, *Clerk.*

51 *Restraining order.*

In the circuit court of the United States for the districts of California, in and for the northern district.

THE UNITED STATES
vs.
THE HEIRS OF J. G. PEÑA, dec'd, *et al.*

Upon reading the bill filed in this cause by Tully R. Wise, district attorney, and on motion of said attorney, counsel for the United States, it is ordered that the defendants, J. Jesus Piña, Antonio Piña, Francisco Piña, brothers, and Clara Piña, sister, and heirs-at

law of José German Piña, deceased, and William Fitch, husband of the said Clara Piña, together with John B. Frisbie, José Leandro Luco, William H. Patterson, and Blas Piña, claiming to be grantees of the heirs-at-law of the said José German Piña, deceased,
52 or of some one or more of them, show cause, before me, in the court-room of the said circuit court, on the fifteenth day of June next, at 11 o'clock a. m. of that day, A. D. 1860, why a writ of injunction against them should not be granted, according to the prayer of the said bill, and in the mean time, and until the further order of this court or judge, that all proceedings on the part of the said defendants, and each and all of them, under said patent in said bill mentioned, so far as the same relates to that portion of the land herein described as lying in the Russian River valley, and north and east of the line drawn along the summit of the range of hills separating the said valley of Russian river from the valley of Tzabaca, as shown in the plat of the survey of the Deputy Surveyor Hays, filed as an exhibit to said bill, and especially as to the alienating, encumbering, leasing, or disposing of said land, or any part thereof, by the said defendants, or either of them, be stayed, and the same are hereby stayed.

M. HALL McALLISTER,
Judge Cir. Court, U. S. Districts of Cal.

53 U. S. MARSHAL'S OFFICE,
NORTHERN DISTRICT OF CAL'A.

I hereby certify that I received the within subpœna in equity and order to show cause on the 21st day of May, A. D. 1860, and that on the 24th day of May, A. D. 1860, I personally served a certified copy of said subpœna, together with a certified copy of said order to show cause, upon Francisco Piña, one of said defendants, in the county of Sonoma; and on the 25th day of May, A. D. 1860, I served a certified copy of the within subpœna and order to show cause upon William Fitch and Clara Piña, in said county of Sonoma; and I certify that I have further made personal service of said subpœna and order to show cause upon William H. Patterson, in the city of San Francisco, on the 29th day of May, A. D. 1860, and personal service of said subpœna and order to show cause, by a copy, on José Leandro Luco, in the city of San Francisco, on the 29th day of May, A. D. 1860, and personal service by copy of said subpœna and order to show cause on John B. Frisbie, at his residence in Solano county, on the 30th day of May, 1860, and at the same time and places exhibiting to each of the above-named defendants the original
54 papers in this cause, Blas Piña, Antonio Piña, and J. Jesus Piña, not found.

P. L. SOLOMON, *U. S. Marshal*,
By JOHN H. WILLIAMS, *Deputy*.

San Francisco, April 29, 1861.

Endorsed: Filed April 29, 1861.
CUTLER McALLISTER, *Clerk*.

55 *Answer of defendants Patterson and Frisbie.*

In the circuit court of the United States for the districts of California, northern district.

THE UNITED STATES OF AMERICA, complainant,
vs.
J. JESUS PIÑA, ANTONIO PIÑA, FRANCISCO PIÑA, Clara Piña, William Fitch, John B. Frisbie, José Leandro Luco, William H. Patterson, and Blas Piña, defendants. } In equity.

The joint and several answers of William H. Patterson and John B. Frisbie, two of the defendants to the bill of complaint of the United States of America exhibited against them and others in the
56 circuit court of the United States for the districts of California.

These defendants now and at all times hereafter, saving and reserving to themselves all manner of benefit and advantage of exceptions to the many errors and insufficiencies in complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as these defendants are advised it is material for them to answer, answer and say:

It is true that a petition was presented to the late board of United States commissioners to ascertain and settle private land claims in the State of California, praying confirmation of the title to a certain tract of land situate in the county of Sonoma, State of California, known by the name of Tzabaco, containing four square leagues, and that proceedings were had thereon, and decree of confirmation entered therein, as charged in complainant's bill. And defendants further admit that one M. G. Vallejo was examined as a witness in said cause while the same was pending before said board of commissioners—a copy of whose deposition is annexed to complainants' bill, marked Exhibit B; but they aver that the said Vallejo was mistaken in regard to the boundaries of the said rancho Tzabaco, as fully appears
57 from the grant and map referred to therein, and that the weight of testimony in the said cause was greatly against the evidence or opinion of the said Vallejo in this regard, and fully established the fact that the valley of Russian river was within the exterior boundaries of said rancho as specified in the said grant and map referred to therein.

And these defendants further say, it is true that on the 1st day of August, 1855, an appeal was taken by the United States from the decision of the said board to the United States district court for the northern district of California, and that on the 9th day of March, 1857, a decree was entered in said court confirming the title of the said claimants to the rancho known as Tzabaco to the extent and quantity of four square leagues, being the same land described in the grant, and of which the possession was proved to have been long enjoyed: provided that the said quantity of four square leagues, which

was by said decree confirmed to the claimants, be contained within the boundaries called for within the said grant, and the map to
58 which the grant refers; and if there be less than that quantity within the said boundaries, then was confirmed by the said decree to the *decree to the* said claimants that less quantity.

And defendants aver that the said decree of the United States district court is materially different from the decree of the said board of commissioners, in this: that the latter confirmed the title of said claimants to rancho Tzabaco according to the boundaries specified in the deposition of M. G. Vallejo, a witness in the cause, whilst the said district court, acting on original titles, confirmed the same according to the boundaries specified in the grant and delineated on the map referred to therein, as will appear by reference to said last-mentioned decree, a copy of which is hereto annexed, marked Exhibit No. 1, and asked to be taken as a part of this answer. And these defendants aver that the valley of Russian river, mentioned in complainant's bill, is included in the boundaries specified in said grant and the map referred to therein, and that said boundaries contain less than the quantity of four square leagues of land confirmed, as aforesaid, to the said claimants.

59 And these defendants, further answering, say it is true that an order was entered, under instructions from the Attorney General at Washington, directing that no further appeal should be prosecuted in said cause, in which it was ordered, adjudged and decreed that said claimants have leave to proceed, under the said decree of the said district court rendered in their favor, as under final decree—a true copy of which order is marked Exhibit E, and made a part of complainants' bill.

And these defendants, further answering, say it is true that the surveyor general for the State of California, in pursuance of his duty under the said act of Congress, approved 3d March, 1851, on or about the month of April, 1858, deputed one C. P. Tracey to make a survey and location of the lands described in the said decree of confirmation entered, as aforesaid, in the said district court; that under the said authority the said Deputy Surveyor Tracey went on the premises and commenced the survey and located a portion of said
60 lands in the valley of Dry creek, improperly designated in complainants' bill as valley of Tzbaco; but defendants deny that the said final decree of confirmation confined and limited the lands confirmed to the said valley of Dry creek and the hills bounding it on either side, and, on the contrary, aver that said decree included both said valley and the valley of Russian river, and the hills dividing them; and they deny that in crossing said last-mentioned hills the said Tracey acted without regard to the limitation and description of the land confirmed to said claimants by virtue of said final decree, or in violation of his authority.

And defendants, further answering, say it is true that while the said Tracey was engaged in making this survey as aforesaid, and before he had entirely completed it on the ground, he was interrupted by certain persons calling themselves settlers, (but more properly

denominated squatters,) and prevented, by their threats of violence to his person and life, from further prosecuting his survey on
61 the ground; and defendants aver that said violent interruption occurred whilst the said Tracey was actually engaged in making his survey of the rancho Tzabaco as aforesaid, and under the authority aforesaid, and within the boundaries of said rancho, as specified in the said grant and map referred to therein, and in said final decree of confirmation.

And said defendants, further answering, say and aver that in the prosecution of the public surveys, and prior to the month of April, 1858, the township lines had been extended over that portion of the country in which the lands so confirmed as aforesaid to said claimants are situated, and that the tracts of land known as the rancho Sotoyome and the rancho Rincon de la Musulacon had also, prior to said month of April, been finally confirmed to the respective owners thereof, and accurately surveyed on the ground, and the surveys thereof approved by the surveyor general, and that said ran-
62 chos adjoin and are bounded in part by and on the said rancho of Tzabaco.

And said defendants further aver that before the said Tracey had been interrupted as aforesaid, and compelled to desist from said survey on the ground he had actually surveyed the larger portion of said rancho Tzabaco, and by means of his field-notes, and by means of the public surveys and township lines, and the field-notes of the surveys of the said ranchos Sotoyame and Musulacon, which had been before that time returned to and filed in the office of said surveyor general, he was enabled accurately to complete the survey of the rancho Tzabaco, and did so complete the same, and returned a full, true, and accurate plat thereof to the office of the said surveyor general. And that said survey was completed from actual surveys on the ground, with the exception of four courses between ascertained points, which were protracted by said Tracey, and which he
63 was prevented, as aforesaid, from running on the ground. And defendants aver that said protracted lines are as certain as if the same had been run on the ground, and are within the boundaries of the said grant and map referred to therein; and that any practical surveyor can take the patent map of the said rancho Tzabaco, and from the same ascertain on the ground the exact location of each and every call, course and distance laid down therein; that the mode adopted by which said map and return were made is perfectly accurate, and admits of no mistake, and cannot possibly include a greater area of land than is designated on said map; and that the location as shown by said map is within the boundaries specified in the said grant and map referred to therein, and in accordance with the said final decree of confirmation. And said defendants file herewith a diagram, marked Exhibit No. 3, showing
64 what lines were actually run on the ground, and what were protracted, and ask that the same may be taken as a part of this answer.

And defendants further aver that it is not necessary or usual, in

the survey of private land claims, to run over or re-survey lines which have been actually run and surveyed on the ground, the field-notes of which have been filed in the office of and approved by the said surveyor general.

And the said defendants aver that the survey and plat of the rancho Tzabaco, so made and returned as aforesaid, is an honest, true, and accurate survey and plat of said rancho as the same was confirmed to said claimants, and includes no other lands than those included in the said grant and map referred to therein, and the said final decree of confirmation, and actually contains less than the granted quantity of four square leagues. These defendants, therefore, deny
65 that the said Tracey made out a plat and reported the same, and returned it to the office of the surveyor general, before he had completed the said survey, and aver, on the contrary, that the facts are, in truth, as therein stated by them.

And these defendants, further answering, say that it is not true that said survey embraces lands excluded from it by the terms of the decree of final confirmation, or that the said survey was not completed, or that the same was made by protraction from imperfect field-notes and vague computations, or that the said survey is illegal and void, as charged in complainants' bill.

And these defendants, further answering, say it is true that after the return of the said survey made as aforesaid by the said Tracey, and after objections had been made to the same, the said surveyor general, J. W. Mandeville, did depute J. C. Hays, in the month of July, 1858, to survey the valley of Dry creek, which survey,
66 together with a plat of the same, was duly made and returned, a copy of which plat, marked Exhibit G No. 2, is annexed to complainants' bill. And defendants aver that the second survey of a portion only of the lands confirmed as aforesaid was made in accordance with and conformity to the views of those contesting the Tracey survey, and because it had been asserted by them that there was sufficient land in Dry Creek valley to satisfy the decree of confirmation; with the view, therefore, of testing the truth of this assertion, and to enable the said surveyor general more intelligently to discharge his official duty in the location of said rancho, he caused his deputy, J. C. Hays, to make this survey as aforesaid. And these defendants further aver that said Hays's survey demonstrated the fact that the said valley contained scarcely more than half the quantity of land which had been granted by the Mexican government to the said J. C. Piña in his lifetime; and that in order to approximate
67 said quantity, it was necessary to include the valley of Russian river, which was equally within the boundaries of the grant and map referred to therein, and the said final decree of confirmation.

And these defendants, further answering, say it is not true that, after the return of the said Hays's survey, no further action was taken in this matter until the 2d day of August, 1859, and aver that by the steamer of the 20th of October, 1858, the said surveyor general left for Washington city, and prior to his departure gave instructions to his chief clerk, Edward Conway, as to the preparation and forward-

ing to him at Washington all the suspended cases of surveys of private ranchos; that one of this class of cases was the said Tzabaco survey, which the surveyor general directed should be sent as aforesaid to him, together with all the papers, evidence, briefs, &c., filed by any or all parties or persons, with the view of laying the
68 whole subject before the proper department at the city of Washington, and especially directed that notice should be given to R. A. Thompson, esq., who had represented himself in the matter of this survey as attorney for the settlers, and not as counsel for government. And defendants aver that said notice was given to the said Thompson, and he was allowed to take all the papers which had been filed in this matter by claimants for examination, and to allow him full time and opportunity to urge his objections in writing against the Tracey survey; the sending of it, together with the other papers so ordered to be sent as aforesaid, was delayed for two weeks, until the 20th day of November thereafter, when they were forwarded to the address of the said surveyor general at Washington, as aforesaid, and were duly laid before the said proper department, and on the 11th day of March, 1859, filed in the General Land Office.

And defendants, further answering, aver that after the said surveyor general had returned to the city of San Francisco, he
69 received a communication from the General Land Office, under date June 29th, 1859, requesting his early attention to the matter of Tzabaco survey, and directing him, in his report, to state the reason why two surveys had been ordered. Upon the receipt of this communication, notice was given, to wit, on the 2d of August, 1859, in writing, to the said R. A. Thompson, esq., as attorney for said settlers, that the said surveyor general would send to the General Land Office, at Washington, D. C., his opinion in the matter of the survey of the Tzabaco rancho, "referring the whole subject to their decision." And defendants aver that on the said 4th of August said opinion and report, in writing, was forwarded to the said General Land Office, and two replies were received thereto—the one under date of August 31st, 1859, requiring a more specific answer to the said communication of June 29th, 1859; and the other under date of September 3d, 1859, directing the said surveyor general to
70 forward, by return mail, the approved plat of the Tracey survey of the rancho Tzabaco for patenting; to which two communications the said surveyor general replied, in writing, on the 3d day of October, 1859, and forwarded the same to the said General Land Office, together with the said approved plat of the Tracey; and thereafter, on the 19th day of November, A. D. 1859, a patent was issued to the said claimants for the land embraced within the lines of the said Tracey survey, which had been confirmed to them, as aforesaid, by the decree of the district court of the United States for the northern district of California; a certified copy of the above-mentioned correspondence is hereunto annexed, marked Exhibit No. 2, and asked to be taken as a part of this answer. And defendants aver that said patent was received here, in the city of San

Francisco, on the day of December, 1859, and of which fact, in a few days thereafter, the said R. A. Thompson had notice.

And these defendants, further answering, say they have no
71 knowledge or information of or belief as to the conversation detailed in complainants' bill, between the said J. W. Mandeville and the said R. A. Thompson; therefore they neither deny or affirm the same; but aver that it is not the duty of the said surveyor general to notify the attorneys of settlers, or even the district attorney, of his conduct or action, when acting under the express orders of the General Land Office, or at any other time.

And further answering, defendants say that they deny, as charged in said bill, that all the lands, embraced within the boundaries described and contained in said Tracey survey and patent, lying within the Russian River valley, and north and east of a line drawn along the summit of the range of hills separating the said valley from the valley of Dry creek, are in fact a portion of the public domain and the property of the United States; and they deny the charge that the said survey and location made by Deputy Surveyor Tracey, was erroneous, illegal, and in fraud of the rights of the United States; and, on the contrary, aver that the said lands are the
72 property of these defendants, and that the said survey and location is an accurate, legal, and just survey of the lands which had been confirmed as aforesaid to the said claimants, whose assigns these defendants are.

And these defendants, further answering, say that they deny that the legal forms and steps to obtain the said patent were hurried through with haste and precipitation, without allowing time for a proper examination and investigation of the subject, as charged in said bill, or that any fraud whatever was committed, either by themselves, or others in their behalf, against the rights of the United States, or that any acts were done in the matter of said survey and patent by which the United States were surprised; but, on the contrary, these defendants aver that the said survey was made in the month of April, 1858, and was approved on the 4th day of October, 1859, and during all this time, a period of about eighteen months, was open for investigation. And defendants further aver
73 that all the legal forms and steps, from the survey to the patent, were most carefully and deliberately observed and taken with full notice to complainants; and that the delay of eighteen months, as aforesaid, was more than sufficient for the fullest investigation, and that such delay was unjust and oppressive to the owners of the said land.

And these defendants, further answering, say that it is not true, as again and repeatedly charged in said bill, that said Tracey survey was illegally, fraudulently, and corruptly made, or that the same is in conflict with the said final decree of confirmation; and they aver, on the contrary, that the said survey was legally, justly, and honestly made in accordance with said final decree. And these defendants expressly deny that any illegality or fraud has been committed in the

matter of the said survey, or in the execution or procurement of the same, either by the said Tracey or by the said surveyor general, or by these defendants, or by either of them, or others in their
74 behalf, or by any person or persons whatsoever; and they further deny that these defendants, or either of them, ever had notice of any fraud or illegality, or that they, or either of them, or their agents or attorneys, or the said claimants, were aiders and abettors to or participators in any fraud, illegality, or corruption in the matter of said survey, or in the procuring of the same, or in any of the intermediate forms or steps between said survey and patent, and aver that the charges to such effect in complainants' said bill are wholly false and untrue. And these defendants aver that they are now the sole owners of the said rancho Tzabaco, and that the said Paterson did not acquire any interest in said lands until the 3d day of August, 1859, long after the said Tracey survey had been made and returned to the office of the said surveyor general.

And these defendants, further answering, say that they deny that the said patent, so far as it includes or relinquishes the title
75 of the United States, or confirms to the said claimants the title to any lands in Russian River valley, or north and east of the line running along the range of hills separating said valley from the valley of Dry creek, is null and void, as charged in said bill; and they deny that said lands are excluded from the limits of said grant by the terms of the said decree of final confirmation; and they deny that said patent is founded on an illegal, fraudulent, and void survey, as charged in complainants' bill; but aver that the said patent is founded on a legal survey, and is a valid, subsisting patent, effectual for the purposes and effects for which it was issued, and comprises and includes the lands which had been granted by the Mexican government to said J. G. Piña, deceased, and which were confirmed, as aforesaid, by the said decree of final confirmation, and no other lands whatever.

And these defendants, further answering, deny that a sale by
76 them of any or all of the said lands would cause any injury or damage to the United States or the settlers on said lands, or cast a cloud on the title of the United States, because they say that the United States has no title to, and the settlers no right in, the said lands, or any portion of them; and aver that by virtue of the said Mexican grant the said decree of final confirmation, the said survey and patent, and the mesne conveyances by which they deraign their title under the said grant, the title to the said lands is in these defendants.

And these defendants deny all fraud and all unlawful combinations and confederacy in the said bill charged; without that, that any other matter or thing material or necessary for these defendants to make answers unto, and not herein or hereby well and sufficiently answered unto, confessed, or avoided, traversed or denied, is true to the knowledge or behalf of these defendants. And which matters and things these defendants are ready to aver, maintain, and prove, as

77 this honorable court shall direct; and humbly pray to be hence dismissed with their reasonable costs and charges in that behalf most wrongfully sustained.

WM. H. PATTERSON.
JOHN B. FRISBIE.
THORNTON, WILLIAMS & THORNTON,
For Defendants.
PATTERSON & FRISBIE.

UNITED STATES OF AMERICA,
State of California, ss:

Wm. H. Patterson and John B. Frisbie, being each duly sworn, each for himself, deposes and says that he has read the foregoing answer and knows the contents thereof, and that the same is
78 true of his own knowledge, except as to the matters therein stated to be upon the information and belief of these defendants, and as to these matters he believes it to be true.

WM. H. PATTERSON.
JOHN B. FRISBIE.

Sworn to before me, June 8th, A. D. 1860.
CUTLER McALLISTER,
Master in Equity.

Endorsed: Filed June 11th, 1860.
CUTLER McALLISTER, *Clerk.*

79 *Answer of defendant Leandro Luco.*

In the circuit court of the United States for the district of California, in and for the northern district.

THE UNITED STATES
vs.
LEANDRO LUCO, impleaded with J. JESUS PEÑA *et al.*
} In equity.—Answer and disclaimer.

The defendant Leandro Luco answering the complainants' bill of complaint, and says that he did not, on the 19th day of November, 1859, or at any time since, have, or claim to have, or pretend to have, nor does he now claim to have, any right, title, or interest of, in, or to the lands and premises described in the bill of complaint, or any part thereof, and this defendant disclaims all right and title of, in, or to the same, and every part thereof.

W. W. STOW,
Solicitor for Def't Leandro Luco.

Endorsed: Filed June 11, 1860.
CUTLER McALLISTER, *Clerk.*

80 *Answer of defendants Wm. Fitch, Clara Fitch, and F'co Peña.*

United States circuit court, northern district of California.

Hon. M. H. McAllister, judge.

THE UNITED STATES
vs.
WILLIAM FITCH and CLARA FITCH, his wife, formerly Clara Peña, and FRANCISCO PEÑA, impleaded with JOHN B. FRISBIE *et al.*
} In equity.—Disclaimer.

The defendants, Francisco Peña, William Fitch, and Clara Fitch, his wife, formerly Clara Peña, and sued by the name of Clara Peña, answering to the complainants' bill of complaint, say that they, nor either of them, on the 19th day of November, eighteen hundred and fifty-nine, had, nor claimed, or pretended to have or claim, any right, title, or interest of, in, or to the premises described in the bill of complaint, or any part thereof, and these defendants jointly and severally disclaim all right and title of, in, or to the same, and every part thereof.

W. W. STOW,
Solicitor for Defendants above named.

Endorsed: Filed June 11, 1860.
CUTLER McALLISTER, *Clerk.*

81 *Authority to appear and answer.*

United States circuit court, northern district of California.

UNITED STATES OF A., &c.,
vs.
J. JESUS PEÑA, ANTONIO PEÑA, CLARA PEÑA, WILLIAM FITCH *et al.*
} In equity.

We authorize Wm. H. Patterson, or any solicitor he may employ, to appear for us, and put in an answer in this action, but we will not be responsible for any costs or counsel fee; the same must be paid and borne by said Patterson.

Healdsburgh, June 1, 1860.

FRAN'CO PEÑA.
her
CLARA + FITCH.
mark.
WILLIAM FITCH.

Endorsed: Filed June 11, 1860.
CUTLER McALLISTER, *Clerk.*

82 No. 374.

Exhibit No. 1 to answer of Patterson and Frisbie.

In the United States district court for the northern district of California.

THE UNITED STATES, appellants, *vs.* THE HEIRS OF J. G. PEÑA, appellee. } "Tzabaco," 4 square leagues.

Sonoma county.—Stated term, March 9, 1857.

On appeal from the final decision of the board of commissioners to ascertain and settle private land claims in the State of California.

Decree.

This cause came on to be heard at a stated term of the court on appeal from the final decision of the board of commissioners to
83 ascertain and settle the private land claims in the State of California, under the act of Congress approved on the 3d of March, A. D. 1851, upon the transcript of the proceedings and decision of the said board of commissioners, and the papers and evidence on which the said decision was founded; and it appearing to the court that the said transcript has been duly filed according to law, and counsel for the respective parties having been heard, it is by the court hereby ordered, adjudged, and decreed that the said decision be, and the same is hereby, in all things affirmed; and it is likewise further ordered, adjudged, and decreed that the claim of the appellees is a good and valid claim, and that the said claim be, and the same is hereby, confirmed to the extent and quantity of four square leagues, being the same land described in the grant, and of which the possession was proved to have been long enjoyed, provided that the said quantity of four square leagues now confirmed to the claimants be contained within the boundaries called for
84 within the said grant, and the map to which the grant refers; and if there be less than that quantity within the said boundaries, then we confirm to the claimants that less quantity.

OGDEN HOFFMAN,
U. S. Dis. Judge.

This decree is correct.

WM. BLANDING,
Dist. Att'y.

I, W. H. Chevers, clerk of the district court of the United States for the northern district of California, do hereby certify the foregoing

"Tzabaco" rancho. You will, therefore, please forward by return of mail the approved plat of survey for patenting.

Very respectfully, your ob'd't servant,

JOS. WILSON,
Acting Commissioner.

J. W. MANDEVILLE, Esq.,
U. S. Surv. General, San Francisco, Cal'a.

U. S. SUR. GEN'L'S OFFICE,
San Francisco, Cal., Oct'r 3d, 1859.

SIR: Herewith you will find the plat, descriptive notes, and decrees of court, in the matter of the final survey of the "Tzabaco" rancho, confirmed to the heirs of J. G. Peña.

92 In answer to the queries in your letter of Aug. 31st, I would state that the usual notice of survey was given by the deputy to all interested parties.

There is no dispute between the owners of this rancho and those bordering thereon.

It was asserted by settlers in the Russian River valley that there was land sufficient in Dry Creek valley to satisfy the decree.

Previous to making a decision, I wished to ascertain if such was the fact, and I therefore instructed Col. Hays to make the second survey.

Upon a careful examination I came to the conclusion that the survey made by C. C. Tracey was the correct one, and have therefore approved the same.

The owners of the rancho, wishing to forward the plat, &c., by express, *via* Panama, as a safer mode of conveyance, I have consented thereto.

93 Very respectfully, y'r ob'd't serv't,

(Signed) J. W. MANDEVILLE,
U. S. Sur. Gen'l.

Hon. T. A. HENDRICKS,
Com'r Gen'l Land Office, Washington, D. C.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, J. W. Mandeville, surveyor general of the United States for the State of California, by virtue of the power vested in me by law, do hereby certify that the annexed preceding and hereunto annexed pages, numbered from one to eight inclusive, exhibit a true, full, and correct copy of all the correspondence on file in this office relating to the survey and location of the rancho "Tzabaco."

94 In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed at the [SEAL.] city of San Francisco, this 22d day of May, 1860.

J. W. MANDEVILLE,
U. S. Surveyor General for California.

Endorsed: Filed June 11th, 1860.

CUTLER McALLISTER, *Clerk.*

(Here follows map, page 94.)

95 *Exhibit No. 3, to answer of Patterson and Frisbie.*

Endorsed: Filed June 11th, 1860.
CUTLER McALLISTER, *Clerk.*

96 *Defendants' Exhibit No. 4.—Translation of def'ts' Exhibits Nos. 5 and 6.*

Proceedings instituted for the measurement and giving possession of eight square leagues on the rancho of Sotoyome, to the citizen Henry Fitch, on the 11th day of September, 1844.
Justice: Citizen JACOB P. LEESE.

Assisting witnesses:
Citizen V'OR PRUDON.
Citizen JULIO CARRILLO.

To the Alcalde of this jurisdiction:

Henry Fitch, a Mexican by naturalization, and owner of the rancho of Sotoyome, in due form of law represents, that as shown by the title, which he presents with all due solemnity, he has in his said rancho eight square leagues within the boundaries as set forth in the titles, and because it is necessary that in all time I should know what the boundaries of the same are, and if I am prejudiced, or if I prejudice any of my surrounding neighbors, you will be pleased to order that after the customary proceedings of identity, vista de-ojos, (inspection,) and examination, that with the citation of the surrounding neighbors, the measurement of said lands be made,
97 for which purpose I now name, as a measurer, Don Gaspar Farrell, a resident of San Rafael, intelligent in such matters; and the others who may be interested will name, on their part, other measurers; and this having been done, those who may be named, with the said Farrell named by myself, when they shall appear, accept, and make oath, the measurements may proceed in conformity with the same.

Wherefore I supplicate your honor, that on the presentation of this document, you will be pleased to do as I have asked; and when the same shall have been done, that the orders and original proceedings be returned to me, for the security of my rights, with this writing and everything necessary.

H. D. FITCH.

Sonoma, Sept. 7th, 1844.

In the pueblo of San Francisco, (Solano.) on the tenth day of the month of September, one thousand eight hundred and forty-four, before me, citizen Jacob P. Leese, 1st alcalde of this jurisdiction, this petition was read, and in view of its having been presented with the documents mentioned, I order, that with citation of the surrounding neighbors, that information be taken of identity,

98 inspection, and examination of said lands, at which I am ready to assist personally. Thus I provided, ordered, and signed, with the assisting witnesses.

JACOB P. LEESE.

Assist.: V'R PRUDON.
Assist.: JULIO CARRILLO.

In the said pueblo, on the 3d day of the said month and year, I, the said alcalde, with those of my assistance, in order to take the information of identity, caused to appear before me the citizen Ramon Carrillo, a resident of this jurisdiction, by occupation a laborer, from whom I received an oath which he made by God, and the sign of the cross, in due form, under which he promised to speak the truth; and being questioned as to his knowledge of the lands, places, extent, and boundaries of the said rancho of Sotoyome, he said, that for six years he had been a resident of this jurisdiction, and knew that the lands pertaining to said rancho belonged to Don Henrique Fitch, and have for boundaries, on the north the Sierra; on the south a range of high hills; on the east the boundaries of Marcos West, and on the west that of German Peña, which he has seen various times; and that since the same have been
99 possessed by the said Fitch he has cultivated them, and has pastured his stock upon the same; in proof of what he has said he is ready to go to said lands with the present justice and point out the places, extent, and boundaries of the same, and that what he has stated, is the truth under the oath that he has made, which he affirmed and ratified, declaring that he was twenty-five years of age; and not knowing how to write, he made the sign of the cross, which I attest.

JACOB P. LEESE.
RAMON CARRILLO.

Assist.: V'R PRUDON.
Assist.: JULIO CARRILLO.

Whereupon I caused to appear before me the citizen William Burn, a resident of this jurisdiction, by occupation a laborer, and having received from him an oath, in due form, under which he offered to speak the truth, he was questioned as to his knowledge of the lands, places, and boundaries pertaining to the rancho of Sotoyome. He said that for five years he had been a resident of this jurisdiction; that he knows that the lands pertaining to said rancho belonged to Don Henrique Fitch; that they had for boundaries,
100 on the north the Sierra; on the south a range of high hills; on the east, the boundaries of Marcos West; and on the west that of German Peña, which he has seen and examined various times, and that since the said Fitch has possessed said rancho he has cultivated the same, and has pastured there his stock; and in proof of what he has said, he is ready to go to said lands with the present justice and point out the places, extent, and boundaries of the same; and that what he has said is the truth, under the oath that he has

made, which he has affirmed and ratified, declaring that he was thirty-two years of age, and that he had no interest in the matter. Signing with me and the assisting witnesses.

GUILLERMO BURNS.
JACOB P. LEESE.

Assist.: V'R PRUDON.
Assist.: JULIO CARRILLO.

In continuation, I caused to appear before me the citizen Mariano Elizalde, a resident of this jurisdiction, by profession a laborer, who, having received the usual oath, under which he promised to speak the truth in relation to the matter about which he should be
101 asked, and being questioned as to his knowledge of the lands and places, extent and boundaries of the rancho of Sotoyome, he said that for seven years he had been a resident of this jurisdiction; that he knew that the lands pertaining to said rancho belong to Don Henrique Fitch; that they have for boundaries on the north the Sierra; on the south the range of high hills; on the east the boundaries of Marcos West, and on the west that of German Peña; and that since the said Fitch had possessed the same he had cultivated it, and pastured his stock upon it; and, in proof of what he stated, he was ready to go to said lands with the present justice and point out the places, extent and boundaries of the same, and that what he had stated was the truth under the oath that he had made, which he affirmed and ratified, declaring that he was twenty-eight years of age, and that he was not interested in the matter, signing with me and the assisting witnesses, which I attest.

MARIANO ELIZALDE. +
JACOB P. LEESE.

Assist.: V'R PRUDON.
Assist.: JULIO CARRILLO.

102 Being in the field, on the place named Sotoyome, on the seventh day of September, one thousand eight hundred and forty-four, I, the first alcalde of Sonoma, acting ex officio, with two assisting witnesses, in the absence of a notary public, and the witnesses by me examined, the citizen Henrique Fitch, owner of the lands, presented himself, with the citizens Marcos West and German Peña, his colindantes and neighbors. I proceeded to examine the lands of said rancho, and for greater clearness, being on horseback, in company with all the parties and witnesses referred to, I ordered them to show me the places, extent and boundaries of the same, in accordance with the signs which they had mentioned in their depositions; whereupon they conducted us towards the east as far as a group of pines, which they showed to me, and from that point the examination and inspection of said lands was pursued in a direction towards the south, until arriving at the commencement of the boundary of Marcos West, at which place there is a dry creek, (arroyo seco;) from this point, continuing towards the west, we arrived at the commencement of the boundary of German Peña, from whence

103 we proceeded in a northerly direction, until reaching the point at which the examination was commenced, which they said were the extent of the boundaries of said lands pertaining to Don Henrique Fitch, which places I, the said justice, saw and examined, with those of my assistance, and the witnesses which had been examined; the papers presented and compared with the document referred to, the identity of the land mentioned is certain, according to the declaration of the witnesses.

In witness whereof, the same was entered in the proceedings, which I signed with those of my assistance and the others who were able to write, which I attest.

JACOB P. LEESE.

Assist.: V'R PRUDON.
Assist.: JULIO CARRILLO.

At the request of Marcos West,

GUILLERMO BURNS. +
GERMAN PEÑA. +
MARIANO ELIZALDE. +

Whereupon I, the said first alcalde, say that, in order to proceed to the measurements referred to in these acts, I order that the said Don Henrique Fitch be notified, in order that he may ratify
104 the appointment of measurer, and also that all the colindantes may agree upon the appointment of one on their part, who must be intelligent in the matter of measurements, and that those who may be named may appear, accept, and make the necessary oath, and when this is done I will be ready to appoint a day on which to make said measurements. This I provided, ordered, and signed with the assisting witnesses.

JACOB P. LEESE.

Assist.: V'R PRUDON.
JULIO CARRILLO.

On the same day, month, and year, I, the first alcalde of Sonoma, read the act, and notified the contents thereof to the citizen Henrique Fitch and to his colindantes, personally, who, having heard and understood the same, said that they heard it, and the first party said that he ratified his appointment of Don Gaspar Farrell, and the second party named Don Guillermo Burns, both of them intelligent and possessing the legal requirements, whom I notified to appear, accept, and make the necessary oath, and afterwards to proceed to said measurements as ordered, and those who knew how to write
105 signed before me and the assisting witnesses, which I attest.

At the request of Marcos West, Guillermo Burns, German Peña †.

GASPER O. FARRELL.
GUILLERMO BURNS.
H. D. FITCH.
JACOB P. LEESE.

Assist.: V'R PRUDON.
Assist.: JULIO CARRILLO.

In the pueblo of Sonoma, on the ninth day of the month of September, one thousand eight hundred and forty-four, I, the 1st alcalde of the jurisdiction of Sonoma, acting ex officio with two assisting witnesses, in the absence of a notary public, notified the act appointing measurers to Don Gaspar Farrell and Don Guillermo Burns, personally, whom I know, who, having heard and understood the same, said that they accepted the appointment of measurers, and made oath, in due form of law, that they would discharge said trust to the best of their knowledge and ability, making said measurements with fidelity, exactitude, and to the satisfaction of all the parties interested, signing with me and the assisting witnesses.

GASPAR O. FARRELL.
GUILLERMO BURNS.
106 JACOB P. LEESE.

Assist.: V'R PRUDON.
JULIO CARRILLO.

Whereupon the said justice, having seen the acceptance and oath made by said measurers, said, that for the making of said measurements he would appoint the eleventh of the present month, at eight o'clock in the morning, and that it should thus be made known to the said measurers, who, having understood the same, said that they accepted the notice, signing with the present justice and the assisting witnesses.

GUILLERMO BURNS.
GASPAR O. FARRELL.
JACOB P. LEESE.

Assist.: V'R PRUDON.
Assist.: JULIO CARRILLO.

On the same day, month, and year, notices were issued to the colindantes Marcos West and German Piña, requiring them to appear on the said eleventh day, on the rancho of Sotoyome, at eight o'clock in the morning. In witness whereof, I sign with the assisting witnesses.

JACOB P. LEESE.

Assist.: V'R PRUDON.
107 Assist.: JULIO CARRILLO.

In the rancho of Sotoyome, on the 11th day of the month of September, one thousand eight hundred and forty-four—present, the citizen Henrique Fitch and the surrounding neighbors to said lands—I caused to appear before me, and those of my assistance, Don Gaspar Farrell and Guill'o Burns, measurers appointed, to whom I ordered that they should take a hempen cord and measure fifty varas, with a vara of four Castilian palms, which the said measurers did in my presence, measuring a cord twisted and well stretched, with a sealed Mexican Castilian vara measure, the said number of fifty varas, which was legally and faithfully done in presence of the interested party and the surrounding neighbors; and in witness whereof, I or-

dered the same to be entered in the proceedings, and that said measurements should be proceeded with as ordered, which I certify, also signing with those of my assistance.

JACOB P. LEESE.

Assist.: V'R PRUDON.
Assist.: JULIO CARRILLO.

Being on the field, and on the lands pertaining to the ran-
108 cho of Sotoyome, to-day, the eleventh of September, one thousand eight hundred and forty-four, I, the 1st alcalde of the jurisdiction of Sonoma, acting ex officio, with two assisting witnesses, in the absence of a notary public—present, the citizens Farrell and Burns, measurers, appointed by the interested party and the colindantes—I ordered that they should proceed to the measurement of the eight square leagues which, a little more or less, pertains to and belongs to the rancho aforesaid, according to the title and diseño presented; in obedience to which, having again measured and examined the cord, said measurements were commenced at the Solar which looks towards the north, named Arroyo de los Pinacales, the boundary of German Peña, (letter A;) from thence all along the skirt of the hills, towards the east, southeast, (letter B,) they arrived, after measuring twenty-eight cordeles of fifty varas, from the point "B," in a direction E.NE., to the letter "C;" measuring seventy cordeles from C to D, in a southeast direction, they counted fifty-seven cordeles; from D to E, in a NE. direction, four cordeles; from E to F, in a SE. direction, forty-eight cordeles; from F to G, six cordeles;
109 from G to H, in a SE. direction, eighty-six cordeles; from H to I, in a E.SE. direction, seventy-five cordeles; from I to K, in an direction SW. by S., one hundred and fifty-four cordeles; from K to L, direction S. by W., sixty-four cordeles; from L to M, direction W.SW., one hundred and twenty-four cordeles; from M to N, direction NW., one hundred and thirty-two and one-half cordeles; from N to O direction NW. by W., twelve cordeles; from O. to P, direction NW., ninety-four cordeles; from P to Q, direction NW. by W., thirty cordeles. So that the measurements being concluded of the lands comprised in the rancho of Sotoyome, belonging to the said Henry Fitch, it results that it forms a square of fifty thousand two hundred and twenty-five varas in circumference from the letter "A" to Q, as shown by the annexed diagram, reduced by the irregularities of the land to forty-six thousand three hundred and thirty varas, and the said measurers declared the said Henrique Fitch to be in possession of the lands which belong to him according to the title and diseño which is found at the commencement of this espediente. Wherefore, and as a sign of the veritable possession, and in accord-
ance with an accustomed ceremonial, stones and herbage were
110 torn from the ground and cast to the four winds, in manifestation of the legal and legitimate possession, which he took by himself. Whereupon the said justice ordered, that for greater clearness of the boundaries referred to, that the interested party should establish, at his own expense, monuments of stone and lime

539

on the said boundaries of more than a vara in height, in order that in all time they may be recognized as the extent and boundaries of his lands by the colindantes of the same; and to show that said measurements were made quietly and peaceably, without contradiction from any person whatever, he asked a testimonial, which I, the said justice, give, that the same was executed as set forth, and that the said measurements were made with all fidelity and to the best of the ability and understanding of the measurers, without fraud or deceit against any person whatever. And for greater security, and in ratification thereof, signing with me and those of my assistance.

H. D. FITCH.
GUILLERMO BURNS.
GASPAR O. FARRELL.
GERMAN PEÑA,
By MARCOS WEST.

Before me. JACOB P. LEESE.

Assist.: V'R PRUDON.
Assist.: JULIO CARRILLO.

111 In view of this espediente being concluded, in which it appears that juridical possession was given of the rancho named Sotoyome to Don Henrique Fitch, let the original be delivered to him, together with the documents which he presented, for the uses that may be necessary. The citizen Jacob P. Leese, 1st alcalde of this jurisdiction, acting ex officio, with two assisting witnesses, in the absence of a notary public, thus provided, ordered, and signed, in Sonoma, on the seventeenth day of the month of September, one thousand eight hundred and forty-four, on common paper, for want of that which has the corresponding seal.

JACOB P. LEESE.

Assist.: V'R PRUDON.
Assist.: JULIO CARRILLO.

Received the proper taxes.
Sonoma, October 17th, 1844.

JACOB P. LEESE.

Tax, $182 50.

I hereby certify the foregoing to be a correct translation from the original Spanish.

R. C. HOPKINS,
Keeper of Spanish Archives in Office of U. S. Sur. Gen'l.
San Fran'co, Dec. 9th, 1863.

112 1846.

Espediente promoted (record of proceedings) at the instance of Francisco Berreyesa relative to the place known by the name of Rincon de Musulacon.

510.

SONOMA, *March 8th*, 1846.

The interested party may provisionally occupy the land which he claims, the same being vacant and not belonging to the property of any one, whilst he applies to the departmental government for the corresponding title thereof, restricting himself precisely to the surplus that may result from the land granted to the adjoining owner, Ferman Peña.

JOSÉ DE LOS S'TOS BERREYESA.

Hon. First Proprietary Justice of the Peace of Sonoma:

Francisco Berreyesa, a resident of the pueblo of San José Guadalupe, and at the same time of Sonoma, before you, with all submission, and as the law permits him, presents himself and says: That being quite resolved to establish himself and settle within this jurisdiction with his movables, and not being able to do so for the want of a proper tract of land to that effect, I request you to permit me to provisionally occupy two square leagues, a little more or less,
113 at the place known by the name of Rincon de Musulacon, bounded on the S. by lands of Don Jerman Piña, and on all other directions by the mountain range, which land is vacant and does not belong to any person whatsoever.

Wherefore, I earnestly request you to grant my petition, and permit me to commence the establishment thereon, whilst I apply to the departmental government for the title thereof, for which favor I shall be ever grateful to you.

Sonoma, March 7th, 1846.

FRAN'CO BERREYESA.

This is written on common paper, because there is none of the stamp that is required at this place.

(Here follows map in the original.)

(Vide map on page 149 of this transcript.)

ANGELES, *May 2d*, 1846.

In view of the preceding petition at the head of this record, the foregoing report, and everything else that was considered and was proper in conformity with the law of August 18th, 1824, and
114 the regulations of November 21st, 1828, I declare the citizen Francisco Berreyesa, a resident of Sonoma, owner in fee of two square leagues of land within the limits comprehended in the map. Let the corresponding title be issued, reserving the "espediente," which will be submitted to the approval of the most excellent departmental assembly.

The citizen Pio Pico, constitutional governor of the department of the Californias, thus ordered, decreed, and signed, which I attest.

PIO PICO.

Pio Pico, constitutional governor of the department of the Californias:

Whereas the citizen Francisco Berreyesa, resident of the jurisdiction of Sonoma, has claimed for his personal benefit the land known by the name of Rincon de Musulacon, to the extent of two square leagues, adjoining on the south that of Don Jerman Piña, and on all

the other directions the range of mountains, having previously made the proper investigations agreeably to the laws and regulations, using the power in me vested, I have, in the name of the Mexican nation, thought proper, by decree of this date, to grant to him the afore-
115 said land, declaring it to be his property by these present letters, in conformity with the law of August 18th, 1824, and regulations of November 21st, 1828, subject to the approval of the most ex't departmental assembly, and under the following conditions.

1st. He may fence it without obstructing the crossings, roads and servitudes; he will enjoy it freely and exclusively, putting it to the use and culture that may best suit him; but he shall have it occupied by an inhabited house, and stock, so as to avoid its being denounced.

2d. He will request the proper magistrate to give him the judicial possession thereof in virtue of this title, by which there shall be marked out the boundaries with the necessary landmarks.

3d. The land of which donation is made to him is of two square leagues, (dos sitios de ganado mayor,) within the limits comprehended in the map annexed to the respective espediente, and so long as there does not result any prejudice to a third party; the magistrate who may give him possession will cause it to be measured in accordance with the ordinance in the matter, leaving the excess that may result for
116 the benefit of the nation to the uses that may be convenient.

In consequence, I order that, holding the present title as firm and valid, the same be registered in the proper book, and be delivered to the interested party for his own security and other purposes. Given at the city of Los Angeles, on this common paper, in default of that which is stamped, this 2d of May, one thousand eight hundred and forty-six.

ANGELES, *May 8th*, 1846.

This espediente having been reported to the most excellent departmental assembly in their session of this day, it was ordered to be transmitted to the committee on vacant lands.

PIO PICO, *President.*
AGUSTIN OLVERA, *Sec'y.*

SIR: The committee on vacant lands has examined the present espediente, at the instance of the citizen Francisco Berreyesa, relative to the place known by the name Rincon de Musulacon, granted to him by the superior departmental government agreeably to the laws in the matter. In virtue of which, it submits to the deliberation
117 of your excellency the following proposition:

It approves the concession made to the citizen Francisco Berreyesa of the place known by the name of Rincon de Musulacon, in Sonoma, to the extent of two square leagues, according to title issued under the date of May 2d of this year, in full conformity with the law of August 18th, 1824, and the 5th article of the regulations of November 21st, 1828.

Hall of committee, at the city of Los Angeles, May 22d, 1846.

S. ARGUELLO.

ANGELES, *June 3d*, 1846.

In session of this day the most excellent departmental assembly approved the preceding opinion.

Pio Pico, constitutional governor of the department of the Californias :

Whereas the citizens Santiago, Nemesio and Francisco Berreyesa, residing in the jurisdiction of Sonoma, have claimed for their personal benefit the land known by the name of Cañada de Copay,
118 bounded on the south by land occupied by Señor Baca or Guisquel, on the east by the property of Señor Nait, on the NW.

I hereby certify the foregoing to be a correct translation from the original Spanish.

R. C. HOPKINS,
Keeper of Spanish Archives in office of the U. S. Sur. Gen'l.
San Fran'co, Dec. 9th, 1863.

119 United States circuit court, northern district of California.

THE UNITED STATES
vs.
THE HEIRS OF J. G. PEÑA, deceased, and others. } In equity.

It is hereby stipulated and agreed, by and between the respective parties hereto, that the annexed and foregoing translations of the Spanish documents filed in this cause on the 11th of June, 1860, by defendants, and marked, respectively, "defendants' Exhibit No. 5" and "def'ts' Exhibit No. 6," made by R. C. Hopkins, keeper of the Spanish archives, be filed in said cause *nunc pro tunc* as of the 11th day of June, A. D. 1860, and be taken and considered as defendants' Exhibit No. 4, the original of which is missing from the files, and that copies of such translations be embodied in the transcript to the U. S. Supreme Court with like effect as if filed previous to the decree herein.

Dated San Francisco, Dec'r 9th, 1863.

WM. H. SHARP, *U. S. Att'y.*
W. H. PATTERSON,
J. J. WILLIAMS,
Att'ys for Def'ts.

Endorsed : Filed Dec'r 9th, 1863.

HENRY C. HYDE, *Clerk.*

120 *Defendants' Exhibit No. 4½.*

Where the record and final decree of confirmation fix the area claimed, thus, for example, "he citios de ganado mayor," or square leagues, and figurative plan, a map delineative of the limits gives a surface much larger than the area confirmed, the location is to be taken within that surface, in a compact form, according to the lines

of the public surveys at the election of the confirmee as to the precise locality, but in such a manner, whenever practicable, as not to interfere with any adverse claim. Where this is not practicable, consistently with the calls of the confirmation, the law is explicit as to the proceedings for the settlement of the conflict.

121 OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, J. W. Mandeville, surveyor general of the United States for the State of California, by virtue of the power vested in me by law, do hereby certify that the preceding and hereunto annexed page, numbered from one, exhibit a true, full, and correct copy of an extract from the instructions from the general land office to the surveyor general of California in regard to the locations of private land claims in the State of California.

In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San [SEAL.] Francisco, this fifteenth day of March, 1860.

J. W. MANDEVILLE,
U. S. Surveyor General for California.

Endorsed: Filed June 11, 1860.

CUTLER McALLISTER, *Clerk.*

122 *Defendants' Exhibit No.* 5.

Espediente.

Ynstrucdo la moder y dar posesion de ocho sitios de ganado mayor en el rancho de Sotoyome al ciud'o Henrique Fitch, el dia ouce de 7 bre de 1844.

Juez ciud'o JACOB P. LEESE.

Cest de assa: { Ciud'o V'R PRUDON. / Ciud'o JULIO CARRILLO.

123 *Sr. alcalde* 1*a de esta jurisdiccion :*

Henrique Fitch, Mejicano pr. naturalizac'n deceño del rancho de Sotoyomi como mejor procedal de atro ante v parezco y digo.

Que como consta del filulo qe. presento con la solemendad y juramto necesario tengolar mi .tho rancho ocho sitio de ganado mayor de cajo or los linderos qe. espresal d'ho titulo y pr. qe. necesito pr. qe. en todo tiempo conste hasta don de llegon y si me perjudican ó perjudico á alguno de los circumvecinos á ellos si ha de server v. mandar qe. procediendo las dilig ca coslambradvey de identidad vista de ojos y recomcim'to se procedal con citacion de los circumvecinos á la medida de mes d'ha sierra pr. cuyo efecto nombre desde ahora y
124 pr. cuando el caso llegue p'r madidor á D. Gaspar Farrell vecino de S. Rafael enteligente en esta materia y qe. los dema qe. fueren interesado nombran pr. la tuya á atro medidore y habun-

dolo hecho asi los q. nombran con el referido Farrell pr. mi nombrado aperezcan acepton y juran y en lu conformidad le proceda á d'ho medidas.

P. C. A. V. suplico qe. habiendo pr. presentado d'ho documento se serva mandar hacer como llebo pedido y fecho q. jea le mi de vuelvan d'ho recanos con los dilig c ong's q'e le hicieran p'r ar guarda de mi derecho este escripo y todo lo necesario, etc.

Sonoma, 7 br. 2 de 1844

H. D. FITCH.

125 En el pueblo de San Francisco solano à los dos dias del mes de Septiembra de mil ochocientos los cuarenta y cuatro, ante mi el c'o Jacobo P. Leese, alcalde 1'o de esta jurisd'on se ley'o este peticeon, y vista la habe p'r psesentado con el documento q'e espresa, y mendo q'e con citacion de los cescumvecenos, se haya informacion se idensidad, vista de ojos y reconocin'to de d'cho torra, á q'e es loy pronto á asister personalmente asi lo provéo, mandé y firmé con los de mi asistencia.

JACOB P. LEESE

Assia.: V'r Prudon.
Assia.: Julio Carrillo.

En el espresado pueblo á los tres dia del mismo mes y año yo el refendo Alealde q'd con los de mi assid, p'a proceder á la
126 infirmean de identidad, huze, parecer ami mi al caed'a Ramon Carrillo, vecino de esta jurisd'on de oficio labrador del cual recibé juram'to q'e hego p'r Dios y la señal de la croy en forma á cargo del cual promatio decir verdad y siendo pregantado p'r el conocim'to de las tierras y parage, hermanos y linderos pertenea'tr al rancho de Sologomé. Dijos. q'e hace lees anos és vecino de esta jurisdiccion, y sabe q'e los teerras pertenec'to a d'ho ravaleo ton de D. Hanseque Fiteh, y teenon p'r landeros al N. la Sierra, al S. una cordillera de lomas allo—el E. el lindero de Marcos West y al O. el de Jerman Peña, los cuade ha vista y reconocido varias vecy, y q'e dede q'e la posee el refirido Fitch la ha labrado cultivado, y han apocentado en alloy sus ganaids; y p'a prueba de lo q tiena dicho, esta pronteo á éd á dichos tierras con el presente juez y señalarle los parage,
127 hermanos y linceras donde llegan; y q'e lo q'e lleva dicho es le verdad p'r al jaramento q'e fiene hecbo en q'e se afirmó y ratifinó declaró ser de veinde y cenco años de edad y no sabieido firmar higo la senal de la cruz de q'e doy fé.

JACOB P. LEESE.
HAMON CARILLO.

Assa.: V'r Prudon.
Assa.: Julio Carrillo.

En seguida, hiza parecer ante mi el ciud'o Guillermo Burn, vecino de esta jurisd'on de oficio labrador y habiendole recibido el juram'to en forma pr. el q'e ofrecio decir veridad fué pregantado pr. el conocen'to de las tierras y parages terminos y linderos pertenec'tes al

rancho de Sotoyome. Dijo q'e hace como años es vecino de esta jurisd'on y sabe q'e las fierras perfericctos á d'ho rancho son de D. Henrique Fitch y tierran q'e linderos al N. la Sierras al S. una
128 cordillera de lomas alta, al E. el lindero de Marcos West, y al O. el de German Piño, las cuales ha visto y reconocido varias vecas y q'e desde q'e los posee el referido Fitch los ha labrado cultivado y han apacentado en ellos sus ganodos; q'e p'a prueba de lo q'e tiene dicho, esta pronto á ir. a d'hos tierras con el pres'te juez, y señalar le los parages terminos y linderos donde llegan, y q'e lo q'e lleva dicho es la verdad pr. pr. el juram'to q'e tienes hecho en q'e se afirmó y ratificó declaro ser de treinta y dos años de edad no tocerle los generales de la ley, y firmo conomgo y los de assi'a de q'e doy fe.

GUILLERMO BURN.
JACOB P. LEESE.

Assi'a : V'R PRUDON.
Assi'a : JULIO CARRILLO.

Acto continuo hize comparecer ante mi al ciud'o Mariano
129 Elizalde, vecino de esta jurisd'on de oficio labrador y habiendoses recibido el juram'to de estilo pr. el q'e ofricer de cer verdad en lo q'e e lfuere paegenitado sientolo pr. el conocem'to de las tierras y parage terminos y linderos pertenec'to al rancho de Sotoyome, Dijo : q'e hace sieres años es vecino de esta jurisd'on y sabe q'e las tierras pertenec'ts á d'ho rancho son de D. Henrique Fitch, y tienen pr. linderos; al N. la sierra al S. los lomas altas, al E. el lindero de Marcos West, y al O. el de German Peña los cuales ha visto y reconocido varias vecz, y q'e desde q'e las poser el referido Fitch, las ha labrado y cultivado y han apacentado en ellas sus ganados; y pr. prueba de lo q'e firme dicho eslá pronto á es a d'hos tierras con el presente juez, y señelarle los parage, terminos y linderos donde llegan, q'e lo q'e lleva dicho es la verdad á cargo del juramento q'e tiene hecho, en q'e se afirmo y ratifico declaro ser de veinte y ocho años de edad no tocarle los g'rals de la ley, y firmo conmigo y los de assi'a de q'e doy fé.

MARIANO + ELIZALDE.
JACOB P. LEESE.

Assi'a : V'R PRUDON.
Assi'a : JULIO CARRILLO.

130 Estando en el campo en el parage nombrado Satoyome el dia siete de Septiembre de ochocientos cuarenta y cuatro, yo el alcalde 1o. de Sonoma, actuando p'r receptoria con dos testigos de assi'a pr. falta de escribano publico los testigos pr. mi ecsamenados, presente el ciud'o han reque Fitch dueño de d'hos tierras y C. C. Marcos West y German Piño sus colindantes y circumvecinos, procedé á ver y reconocer las tierras de d'ho rancho y p'a mayor claridad, puesta á caballo en compañia de todos los partes y testigos referidos, mandé á los suso dichos me señalasen los parages, terminos y inderos de ellos, segan las señales q'e han declarada en sus deposi-

ciones y en su conformidad guiaron al E. hasta llegar á un grupo de pinos q'e me mostraron; y desde alli pronguió el reconocim'to y visto de ajos de d'hos tierras rumbo S. hasta llegar al principio del lindero D'n Marcos West, donde se halla un arroyo seco; desde alli conferi-
ciando al rumbo O. llegamos al principio del lindero de German Piño desde donde se prosiguio rumbo N. hasta llegar al punto de donde se empezo el reconocimiento q'e dijéron ser los ultimos terminos y lin-
deros de las espresados tierras pertenec tos a D. Henrique
131 Fitch cuyos parages yo el repetido juez vi y reconocé, con los de mi assi'a testigos ecsamenados, q. papales presentados, y cotejado con estos el referido documento ser acara la identificacion de las mencionados tierras, segun y como lo declararon dichos testigos, y p'a q'e consta se paso pr. diligencia, y lo firmé con los de mi assi'a y demas q'e supieron de q'e doy fe.

JACOB P. LEESE.

Assi'a: V'R PRUDON.
Assi'a: JULIO CARRILLO.

A ruego de Marcos West.

GUILLERMO BURN.
GERMAN × PINA.
MARIANO × ELIZALDE.

Ynmediatam'te yo el alcalde 1o. referido, digo q'e p'a proceder a los medidas conferidos en estos antos, mando se notifique á otho
132 D. Henrique Fitch p'a q'l ratifique el nombram'to de medidas, como asi mismo q'e de acuerdo todos los colind'tes nombrar pr. su parte el suyo habiendo de ser intelig'tes en materia de medidas, y los q'e fueren nombrados, parezcan acepten y juren, y hicho esto, estoy ponto à señalar dia p'a d'hos medidas. Asi lo prová mande y firmé con los de mi assi'a. JACOB P. LEESE.

Assi'a: JULIO CARRILLO.
Assi'a: V'R PRUDON.

En el mismo dia, mes y año yo el alcalde 1o. de Sonoma, lei y notifiqué el auto de su aso segun y como en él se contiene el ciud'o Henrique Fitch, y á sus colind'tes en sus personas q'e habiendolo oido y con tendido digeron lo oyeis y el primero digo q'e
133 ratifica su nombram'to en D. Gaspar Farrell y el segundo nombre á D. Guillermo Burns ambos en haligentis y de legalis dad a queenes se los notifiqué parezcan, acepten y garen, y á consecuencia se proceda á othos medidas como está mandado y lo firmaron los q'e sopieron ante mi y los do assi'a doy fé.

A ruego Marcos West.

GERMAN PIÑA. †
GUILLERMO BURNS.
H. D. FITCH.
GASPAR O. FARRELL.
JACOB P. LEESE.
GUILLERMO BURNS.

Assi'a: V'R PRUDON.
Assi'a: JULIO CARRILLO.

En e pueblo de Sonoma a los nueva dias del mas de Septiembre de mil ocho cientos cuarenta y cuatro yo al alcalde 1o. de la jurisd'n actuando pr. receptoria con dos testigos de ass'a pr. falta de es-
134 cribano Pio Pico ler y notifi que el auto de lu aso y nombran'to de medidory á D. Gaspar Farrell y D. Guill'mo Burns en seas persona qe. conozco y habiendolo oido y entendido dijeran qe. aceptan al encargo de medida qe. seles conbia y jaranon ar forma de derecho qe. usare an de su encargo feel y legalm'te segun su leal saber y entendor y qe. verificarian d'hos medida con fidelidad y esactitud y á satisfaccion de todo los interesado y lo firmaron conmigo y los de assi'a.

GASPAR O. FARRELL.
GUILLERMO BURNS.
JACOB P. LEESE.

Assi'a: V'R PRUDON.
Assi'a: JULIO CARRILLO.

En seguido el repetido por juez habiendo visto la aceptacion y juramento pecho pr. los medidora nombrados dije qe. pr. ce procedar a d'hos madidos asignaba y asigne al dia once del corr'le a las ocho de la mañana y qe. se haga saber asi à los mencionados
135 medidora y atendido dijeron qe. se dore q. citados y lo firmaron con el presente juez y los de assia.

GUILLERMO BURNS.
JASPAR O. FARRELL.
JACOB P. LEESE.

Assi'a: V'R PRUDON.
Assi'a: JULIO CARRILLO.

En el mismo dia mes y año se libraran boletos de comparan do a los colindante Morcas West y German Piña pa. qe. comparezcan el pruo dia once en el mencionado rancho de Sotoyome á los ocho de la mañana y pa. constancia lo firma con los de nir assia.

JACOB P. LEESE.

Assi'a: V'R PRUDON.
Assi'a: JULIO CARRILLO.

136 En el rancho de Sotoyome á los once dias del mas de Septiembber de mil ochocientos cuarenta y cuatro presente el ciud'o Henrique Fitch y circumvecinos a d'hos sierras hiza comparear ante mi y los de mi assia a Gaspar Farrel y Guill'mo Burns medi lone nombrados á guiena mandi tomasen con cordel do hilo y midieron carcuenta vara con vara de medir de cuatro palmos castellanos y su efecto los referido mandidoras en mi presencia medceron en un cordel forcido y been tirado con vara de meder costellana mejicana y sellada el numero dideo de concuanto varas lo qe. verificanon fiel y legalmente a visca y presencia del interesado y circumvecinos y pa. qe.

consta mando se ponga pr. diligencia y se proceda á dcchas medidas como esta mandado lo que certifico asi mismo fermandolo con los de mi assia.

JACOB P. LEESE.

Assi'a: V'R PRUDON.
Assi'a: JULIO CARRILLO.

137 Estando en el campo y tierras pertenecientes al rancho de Sotoyomé hoy once de Sep're de mil ochocientos cuarenta y cuatro, yo el alcalde 1o. de la jurisd'on de Sonoma actuando pr. receptoria con dos testigos de assia pr. falta de escribano publico presentes los CC. Farrell y Burns, medidores nombrados pr. la parte cuperesado y colindantes, mande procedeasin a la medida de ocho sitios de ganado mayor q'e poco mas ó menos tocan y partenecun al rancho d'ho segun el titulo y diseño presentado, en cuyo obedicien'to habiendo vuelto á medir y reconocer el cordel, dieron principio á d'ha medido desde el solar q'e mira a la parte del õ letro A vs. N. nombrado arroyo de la Pinacales, linderos de German Piña letro A õ desde donde sie fue camirando pr. toda la orilla de los lomas pacia el E.SE. letro B, y llegaron convienta y ocho cordeles de cincuenta v'a del piento B rumbo E.NE. hasta la letro C, midieron setenta cordeles; de C, á D, rumbo SE. conpareci cincuenta y sieta cordeles de D á E rumbo NE cuatro cordeles; de E á F rumbo SE. cuarenta y ocho cordeles; de F á G rumbo NE. seis cordeles; de G á H
138 rumbo SE. ochenta y seis cordeles; de H á J rumbo E.SE. setenta y cinco cordeles; de J á K rumbo S. O. pr. S. ciento cincuenta y cuatro cordeles, de L á M rumbo O. S. O. ciento veinto y cuatro cordeles; de M á N rumbo N. O. ciento treinta y dos y media cordeles; de N á O rumbo N. O. P. O. doce cordeles; de O á P rumbo N. O. noventa y cuatro cordeles; de P á Q rumbo N. O. P. O. treinta cordeles; de manera q'e dandose pr. concluido la medida del terreno q'e comprenda el rancho de Sotoyomé del referido D. Henrique Fitch resulta q'e forma con cuadro de cincuenta mil doscientos veinba y cinco v's de circumfer'ca desde A hasta Q, segun indica el adjunto diagrama reducido pr. los irregularidad del terreno á cuarenta y seis mil trescienta treinta vara, y declararan los encinciados mediadores estar cuperado el cin'do Henrique Fitch de las tierras q'e le correspondar segun el titulo y diseño q'e le hallan á la caluza de este esped'te pr. todo lo cual, y en señal de verdadera posesion y ceremonial acostumbrado arranco piedras y yerbas y tiro pr. los cuatro vientas en manifestac'n de su legal y legitima posesion q'e tomo pr. si en consecuencia el repetido sor jues mandó q'e p'a mas
139 clasedad de los linderos q'e van espresados hizuse a su costa y mantian cenas mohoneras de piedra y cal en allos de mas de vara p'a q'e en todo tiempo conste reanozcar y quedan pr. terminos y linderos de sus tierras pr. los demas circunvecinos de ellos, y de haberse ejecutado d'has medidas questa y pacifican'to sus contradiccion de persona alguna lo pideó pr. testimonio y yo, el referido juez lo doy de haber pasado como dicho es, y q'e las espresadas medidas hace sido practicadas á todo el leal saber y entendir de los medidores

segun de pusieron su dolo, fraude ni engaño en contra de ninguna persona, p p'a mas seguridad y ratificac'n firmando conmigo y los de ass'a.

H. D. FITCH.
GASPAR O. FARRELL.
GUILLERMO BURNS.
GERMAN PENA.
Pr. MARCOS WEST.

Ante mi: JACOB P. LEESE,
GUILLERMO BURNS.

Ass'a: V'R PRUDON.
Ass'a: JULIO CARRILLO.

140

141 En vista hallasea concluido este espedte. en qe. consta habersele dado posesion juridica del rancho nombrado Sotoyome a Dn. Henrique Fitch, entreguaele el original pa. los usos qe. le convengan con los documentos qe. presenta el c'n Jacobo P. Leese, alcalde 1a. de esta jurisdon. actuando pr. receptoria con dos testigos de assea pr. falta de escribano publico, asi lo proveé mande y firme en Sonoma á los diez y siete deas del mes de Septre. de mil ochocientos cuarenta y cuatro en papel comun pr. falta dol sellado corresp'te.

JACOB P. LEESE.

Ass'a: V'R PRUDON.
Ass'a: JULIO CARRILLO.

Recibe los dhros. del Arancel dhr 182-4.
Sonoma, Octbre. 17, 1844.

JACOB P. LEESE.

142 No. 161. Josefa Carrillo Fitch *et al.* — Sotoyome.—Doc. W. H. ann'd to the depo. of Julio Carrillo, taken before commissioner Harry J. Thornton. Filed in office Aug. 6, 1852. Geo. Fisher, Sec'y. Recorded on Ev. Book, vol. 6, p'ge 137. Geo. Fisher, sec'y.

143 OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, J. W. Mandeville, surveyor general of the United States for the State of California, and as such having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, as also the papers of the late board of commissioners "to ascertain and settle private land claims in California," by virtue of the power vested in me by law, do hereby certify that the 21 preceding and hereunto annexed pages of tracing paper, numbered from one to 21, inclusive, exhibit a true, full, and correct copy of an original document, together with the endorsements thereon, as the same ap-

pears on file in case No. 16, on the docket of said board of commissioners.

In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San Francisco, this 23d day of Aug., 1858.

[SEAL.]

J. W. MANDEVILLE,
U. S. Surveyor General for California.

144 Endorsed: Filed June 11th, 1860.

CUTLER McALLISTER, *Clerk.*

145 *Defendants' Exhibit No.* 6.—1846.

Espediente promovido por el ciudadano Fran'co Berreyesa del parage conocido con el nombre de Rincon de Musulacon.—510.

146 SONOMA, *Mzo.* 8 *de* 1846.

Puede el interesado ocupar el terreno q'e pretende en la presente solicitud probicionalm'te p'r estar calvillo y no pertenecer apropiedad ninguna; intertanto ocurre al gobierno departamental p'r el titulo correspondiente; sujetandose previam'te al sobrante q'e resulte del terreno q'e tiene consedirle el colindante Jerman Peña.

JOSE DE LOS S'TOS BERREYESA.

S'or jues de paz 1o propietario de Sonoma: Fran'co Berreyesa vecino del pueblo de S'n José de g'fe y a la vez de Sonoma ante V. con toda subordinacion y el derecho le permite se presenta y dice: Que hallandose del todo resulto á establecerse y radicarse en esta jurisdicsion con sus bienes semobienes, y no pudiendo cerificarlo por falta de un terreno propio para el efecto suplico a V. me permita ocupar provicionalm'te dos citios deganado mayo, poco mas ó menos en el parage conocido con el nombre de Rincon de Musulacon, colindante por el S. con D'n Jerman Peña y por todos los demas rumbos con la serrania, cuyo terreno esta baldio, y no pertenese ápersona alguna.

P. F.—A. V. carecidamente suplico se sirba aseder á esta mi solicitud y permitirme dar, principio á la fundacion intertanto
147 ocurro al gob'no del depar'm'to por el titulo correspondiente, de culla gracia le bivere reconosido.

FRAN'CO BERREYESA.

Sonoma Mzo., 7 de 1846.

Bá en papel comun por no haber del sello corresponde en este lugar.

148 ANGELES, *Mayo* 2 *de* 1846.

Vista la ultima peticion con que da principio este espediente el informe que antesede con todo lo demas que se tuvo presente y ver convino de conformidad con la ley de 18 de Agosto de 1824, y reglamento de 21, de Noviembre de 1828, declaro al ciudadano Fran'co Berreyesa vecino de Sonoma diseño en propriedad de dos sitios de ganado ma yor dentre de los limites comprehendidos en el diseño. Libresele el titulo correspondiente y reservese, el espediente para someterlo á la aprobacion de la exma. Asamblea departmental, el ciudadano Pio Pico, gobernador constitucional del departamento de las California asi lo mandé decrete y firme de que doy fé.

PIO PICO.

149 (Here follows map, p. 148.)

Pio Pico, gobernador constitucional del departamento de las Californias.

Por cuanto el cind'o Fran'co Berreyesa avecindado en la jurisdiccion de Sonoma ha pretendido p'a su veneficio personal el terreno conocido con el nombre de Rincon de Musulacon en estencion de dos citios de ganado mayor, colindante, por el S. con D'n Jerman Piña y, por todos los demas rumbos con la sierra, practicadas previamente las averiguaciones conserniero tes segun lo dispuesto por leyes y reglamentos, usando de las facultades que me son conferidas á nombre de la nacion Mexicana, he venido por decreto de este dia en consederte el espresado terreno, declarandole la propiedad de el por las presentes letras, de conformidad con la ley de 18 de Agosto de 1824, y reglamento de 21 de Nobiembre de 1828, á reserva de la aprobacion de la E. asamblea departamental y cajo las condiciones siguientes:

1a. Podrá sercarlo sin perjudicar, las travecias, caminos y servidumbres lo disfrutará libre y esclusivamente destinandolo al uso y cultivo que mas le acomode pero lo tendrá ocupado con casa habitada y bienes semovientes á fin de evitar el denuncio.

2a. Solicitar del jues respectivo le dé la posecion judicial
151 en virtud de este despacho, por el cual se demarcaran los linderos con las mojoneras necessarias.

3a. El terreno de que se le hace donacion es de dos citios de ganado mayor dentro de los limites comprehendidos en el diceño que obra en espediente respectivo y siempre que esta no resulte en perjuicio de tercene: el juez que lo posesione lo hará medir conforme á ordenanza quedando el sobrante que resultá beneficio de la nacion p'a los usos que convengan. En consecuencia man do que teniendose el presente titulo por firme y valedero, se tome razon de el en el libro á que corresponde y se entregue al interesado p'a su resguando y demas fines. Da do la cindad de los Angeles en este papel comun por falta del sellado á dos de Mayo de mil ochocientos cuarenta y seis.

ANGELES, *Mayo* 8 *de* 1846.

Dado cuenta en sesion de hoy con este espediente á la E. A. D. se mandó pasar á la comision de terrenos baldios.

PIO PICO, *Presid'te.*
AUGUSTIN OLVERA, *Sec.*

152 SENOR: La comision de terrenos valdios á examinado el presente exped'te promovido p'r el C. Fran'co Berreyesa relativo al parage consudo con el nombre de Rincon de Musulacon q. le fue concedido p'r el sup'r gob'o departam'e con arreglo a las leyes de la materia en esta virtud pone a la deliveracion de N. E. la prop'on siguiente:

Le aprueve la concecion hectra al C. Fran'co Berreyesa del parage conocido con el nombre Vincon de Musulacon en Sonoma en estencion de dos sitios de ganado mayor segun titulo librado con f'tra 2 de

Mayo de este año de entera conformidad con la ley de 18 de Ag'to de 1824 y el art'o 5o del reglam'to de 21 de O'bre de 1828.

Sala de com's en la ciudad de los Ang., Mayo 22 de 1846.

S. ARGUELLO.

153 Angeles, Junio 3 de 1846.

En sesion de esta dia aprobo la E. asamblea departamental proposicion del dictamen anterior.

154 Pio Pico, gobernador constitucional del departamento de los Californias.

Por cuanto los ciudadanos Santiago Nemecio y Francisco Berreyesas averindados en la jurisdiccion de Sonoma han pretendido para su beneficio personal el terreno conocido con el nombre de Cañados de Capay colindante por el sur con el que ocupo el S'or Baca ó Guisquel por el oriente con el de la propiedad del S'or Noit por el N. O.

155 OFFICE OF THE SURVEYOR GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

I, J. W. Mandeville, surveyor general of the United States for the State of California, and as such having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, as also the papers of the late board of commissioners "to ascertain and settle private land claims in California," by virtue of the power vested in me by law, do hereby certify that the ten (10) preceding and hereunto annexed pages of tracing paper, numbered from one to ten (10) inclusive, exhibit a true, full, and correct copy of an original document entitled "1846 Espediente promovido por el ciudadano Fran'co Berreyesa del parage conocido an el nombre de Rincon de Musulacon, 510." as the same appears on file among said archives.

In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed at the city of San [SEAL.] Francisco, this 9th day of June, 1860.

J. W. MANDEVILLE,
U. S. Surveyor General for California.

Endorsed: Filed June 11th, 1860.

CUTLER McALLISTER, *Clerk.*

156 *Affidavit of W. J. Lewis.*

In the circuit court of the United States for the district of California, northern district.

THE UNITED STATES
vs.
JOHN B. FRISBIE *et al.*, impleaded with J. JESUS PIÑA *et al.* } In equity.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Wm. J. Lewis, being duly sworn, says he resides in the city and co. of San Francisco; that he has no interest in the event of this action.

That he is by occupation and profession a practical surveyor, and has been since the year A. D. 1828.

That he is now a U. S. deputy surveyor under J. W. Man-
157 derville, and was such under J. C. Hays, esq.

That he has carefully examined the patent map of the rancho Tzabaco, and also the skeleton map marked def't's Exhibit No. 3.

That, as a practical surveyor, affiant says that the west line of the rancho Tzabaco having been run by chain and compass, and the north line of the rancho Sotoyome and the south line of the rancho Rincon de Musalacon having been established by actual survey, and approved by the sur. gen'l, and the public lines or surveys established and approved, there is no difficulty in establishing and protracting such surveyed lines in the manner laid down on the patent map and Exhibit No. 3, so as to include the area embraced in the patent map of "Tzabaco."

That no surveyor who understands his business and duties practically could make a mistake in extending and protracting said surveyed lines, and computing and ascertaining the number of
158 acres therein embraced, presuming that this survey had been correctly made.

That no practical surveyor would think of re-running the line of the rancho Sotoyome and Rincon de Musalacon for the purpose of establishing the corresponding lines of the rancho Tzabaco; but, on the contrary, would adopt the lines so run and established as correct, the same having been approved by the sur. gen'l.

WM. S. LEWIS.

Subscribed and sworn to before me, June 11, 1860.

CUTLER McALLISTER,
Master in Equity.

Endorsed: Filed June 11th, 1860.

CUTLER McALLISTER, *Clerk.*

159 *Affidavit of J. W. Mandeville.*

In the circuit court of the United States for the district of California in and for the northern district.

THE UNITED STATES
vs.
THE HEIRS OF J. G. PEÑA, dec'd, *and al.* } In equity.

Personally appeared before me, the undersigned, J. W. Mandeville, and being first duly sworn, deposes and says: That prior to and ever since the month of April, 1858, he was and is the surveyor general of the United States for the State of California; that as such he caused a survey of the "rancho Tzabaco," which had been finally confirmed, to be made by his deputy, Charles C. Tracy, and afterwards, upon careful investigation and mature deliberation, approved the same; that said survey was made in the month of April, 1858, and after being returned to his office was objected to by Judge R. A. Thomp-

son, as attorney for settlers on the claim, who contended that the land should be located between the hills bounding the valley through which the arroyo Tzabaco flowed; that, in deference to this opinion, and to enable him the more intelligently to perform the duty imposed upon him as surveyor general, as aforesaid, by the act of Con-
160 gress of the 3d March, 1851, he caused said valley, in July, 1858, to be surveyed by his deputy, John C. Hayes; that with those two surveys before him, he carefully read the original papers in the cause and the final decree of confirmation, the affidavits of witnesses in regard to the proper location of the grant, and viewed the land in person, accompanied by Judge Thompson and others; that after consulting every source of information, and giving to the subject the most careful deliberation, he then became, and is now, satisfied that the decree of final confirmation, the grant, and the map referred to therein, embrace and include the valley of Russian river, and that no true and proper location of the said rancho can be otherwise made; that his judgment being fully satisfied upon this point, he did, (after consulting the proper department in Washington,) on the 4th day of October, 1859, sign the approval of the survey so made as aforesaid by said Tracy, and on the next day forwarded the same to said department upon his express order to that effect; a copy of which order may be seen in the correspondence attached to the affidavit of Edward Conway, entitled in this cause.

And affiant further says, that he has read the said affidavit
161 of Edward Conway, and that the same is true of his own knowledge, except as to the first notice given, and the delivery of papers to Judge Thompson while this affiant was in the city of Washington, and as to those upon information he believes it to be true. And affiant further says, that the said department in Washington was notified of objections to the survey, and was furnished with a brief of protest by Judge Thompson, which this affiant believes he saw on file among the papers pertaining to the survey of the Tzabaco rancho before the issuance of the patent, and subsequently approved his action in the matter. And this affiant further says, that it is not the custom or usage of his office to notify either the attorney for the settlers or the district attorney of the United States of his intention to forward to Washington approved surveys, nor has he any knowledge of any law, rule, or instructions that require him so to do; that if such notice is given, it is a mere act of courtesy.

J. W. MANDEVILLE.

Sworn to before me this ninth day of June, A. D. 1860.

CUTLER McALLISTER,
Master in Equity.

Endorsed: Filed June 11, 1860.

CUTLER McALLISTER, *Clerk.*

162 *Affidavit of Edward Conway.*

In the circuit court of the United States for the districts of California in and for the northern district.

THE UNITED STATES
vs.
THE HEIRS OF J. G. PEÑA *et al.* } In equity.

Edward Conway, being duly sworn, deposes and says: That he is the chief clerk in the United States surveyor general's office of California; that in the months of October and November, 1858, he was examiner of the surveys in said office; that by steamer of 20th October, 1858, Mr. Mandeville left for Washington; that previous to his departure, he left instructions with deponent as to the preparation and forwarding to him at Washington all the suspended cases of surveys of private ranchos; that one of this class of cases was the "Tzabaco" survey, which he directed should be sent to him for the purpose of laying the whole subject before the department; he also directed that copies of all the papers, evidence, briefs, &c, filed by all parties, should be also forwarded, and that due notice should be given to Judge Thompson, attorney for contestants, so as to enable him to for-

163 ward at the same time any papers that he might wish.

That such notice was given by deponent's order, and Judge Thompson, at his own request, was allowed all the papers filed by the opposite parties for his supervision. That to give the contestants full opportunity, a postponement of one steamer was had, and in the month of November, as deponent believes, the survey, with copies of all papers on file, were forwarded as directed by the surveyor general. That subsequently, after Mr. Mandeville's return from Washington, a correspondence was had in relation to said surveyor, copies of which are annexed to this deposition. That the further report demanded by the department was duly prepared, and notice in writing was given to Judge Thompson that said report would be forwarded, a copy of which is also hereto annexed. That from the date of said report the survey could have at any time been ordered into the U. S. district court for examination upon the proper application made by either the district attorney or attorney for claimants, and that it is not customary for the surveyor general's office to give notice to attorneys as to the proper time or mode of conducting their business.

EDWARD CONWAY.

Sworn before me this 9th day of June, A. D. 1860.

CUTLER McALLISTER,
Master in Equity.

Endorsed: Filed June 11th, 1860.

CUTLER McALLISTER, *Clerk.*

164 *Affidavit of C. Bielawski.*

In the circuit court of the United States for the district of California, northern district.

THE UNITED STATES, complainants,
vs.
THE HEIRS OF J. G. PEÑA *et al.*, defendants. } In equity.

STATE OF CALIFORNIA,
City and County of San Francisco:

Casimer Bielawski, being duly sworn, says, he is principal draftsman in the office of the U. S. surveyor general for the State of California.

That in that capacity it was his duty to, and he did, revise the plat and map of the rancho Tzabaco, as returned to the office of said su'r gen'l, and in which map the patent issued.

That he ascertained, by calculation and computation, and comparison with the surveys of the rancho Sotoyome and Rincon de Musalacon, and the public surveys of the U. S., on file in the office of said su'r gen'l, that the said Tracy map and return of survey, did not include an area of more than $15,439\frac{32}{100}$ acres.

That from the data furnished to said Tracy, viz: the survey
165 of the rancho Sotoyome, that of Musalacon, and the lines of the U. S. surveys, and the surveyed west lines of "Tzabaco," there is no difficulty in a practical surveyor extending and protracting the lines of the rancho Tzabaco, as shown in def'ts Exhibit No. 3, in this cause, with as much accuracy and certainty as if said lines had actually been run by chain and compass.

That affiants made def'ts Exhibit No. 3 from the final surveys and plats of the rancho Sotoyome, Musalacon, and the public surveys on file in said sur. gen's office, and knows the same to be a true and accurate representation of the boundaries of the rancho adjoining the "Tzabaco" rancho, and of the public surveys in that immediate vicinity.

That by taking said Exhibit No. 3, there is no difficulty in protracting the lines in the manner the same is shown thereon to have been protracted, and computing the quantity of land therein embraced with accuracy and certainty.

CASIMER BIELAWSKI.

Sworn to before me, June 11, 1860.
CUTLER McALLISTER,
Master in Equity.

Endorsed: Filed June 11th, 1860.
CUTLER McALLISTER, *Clerk.*

166 *Affidavit of Surveyor C. C. Tracy.*

In the circuit court of the United States for the districts of California in and for the northern district.

THE UNITED STATES *vs.* JOHN B. FRISBIE AND WILLIAM H. PATTERSON, impleaded with J. JESUS PEÑA *et al.*	Affidavit of C. C. Tracy.—Defendant's Exhibit No. —.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

C. C. Tracy, being duly sworn, deposes and says, that he now does, and has resided in the city, co., and State aforesaid for eight years last past. That for 12 years last past he has been, by profession and actual occupation, a practical surveyor.

That some months prior to the 3d day of April, 1858, affiant was appointed by J. W. Mandeville, United States surveyor general for the State of California, a deputy U. S. surveyor under said Mandeville for that district or portion of the State of California which embraces the county of Sonoma and the rancho Tzabaco.

That on or about the 5th day of March, 1858, affiant re-
167 ceived from the said U. S. surveyor general instructions for the final survey of the "rancho Tzabaco," finally confirmed to the heirs of J. G. Peña, deceased, and directions to survey said rancho. That such instructions and directions were so as aforesaid issued to affiant without any request or solicitation on the part of affiant, or on the part of any person interested in said rancho, to the knowledge of affiant.

That, upon receiving such instructions and directions, affiant carefully examined the same, and also examined the final decree of the U. S. district court (on file in the sur. gen's office) confirming said "rancho Tzabaco," and the expediente, map and testimony on which the same was based; and also carefully examined the final and approved survey and map of the rancho Sotoyome finally confirmed to the heirs, &c., of Henry D. Fitch, (which last-mentioned survey and map had been made, and finally approved by said surveyor general, prior to affiant receiving said instructions, and were then on file in said sur. gen's office,) and also examined the final survey of the rancho "Rincon de la Musalacon," which had been before then finally surveyed by affiant, and the survey thereof finally approved by said sur. general; and also examined the records of the juridical possession of the rancho Sotoyome by the Mexican authorities now and then on file in said surveyor general's office.

168 That affiant made such examinations and investigations in pursuance of his duty and for the sole purpose of ascertaining and determining the location and boundaries of the rancho Tzabaco, and whether or not the location and survey of the same should include both Dry Creek and Russian River valley, so-called. That from such

examinations and investigations affiant became impressed with the conviction that the true and only location of said rancho would include both valleys. That such conviction was reduced to a certainty in the mind of deponent upon affiant's comparing the topography of the country with the diseño, grant, and espediente of the "rancho Tzabaco," and did not, at the time of making the survey of the rancho Tzabaco, nor does he now, entertain any doubt but that the location of the rancho Tzabaco should be made so as to include both Dry Creek and Russian River valleys, as the same is now included in the patent of raid rancho.

And affiant further says, that, in pursuance of the said instructions, deponent proceeded to the rancho Tzabaco, and on the 3d day of April, 1858, commenced the actual survey of the rancho Tzabaco on the west side of Dry creek, at the northwest corner of the final survey of the adjoining rancho "Sotoyome," and ran westerly on the same course as the northern boundary line of the rancho Sotoyome,
and being a continuation of the north patent line of the
169 rancho "Sotoyome" to the foot of the hills on the west side of
Dry Creek valley, at which point affiant established a corner of the rancho Tzabaco, which corner is the southwest corner of the rancho Tzabaco, and marked on the patent map "Beginning stake I, No. 1."

That from the corner so established, the affiant made an actual survey with compass and chain along the foot-hills along the west side of Dry Creek valley, as the said line is now shown on the patent map of the rancho Tzabaco, until the said Dry Creek valley narrowed down until it became almost a cañon, at which point affiant established a corner which is designated on said patent map as post I., No. 3.

That, at that time, deponent found established township or section lines of the United States on the course of said westerly patent line of the rancho Tzabaco, (which township lines had before then been run and established by the office of the sur. general of the United States for the State of California, and with which township lines the affiant connected his said survey of the said western line of the rancho Tzabaco, as will fully appear by reference to the patent thereof.

That from the said northwestern corner of the rancho Tzabaco so
established by affiant, it was (at the time) the intention of
170 affiant, in the prosecution of said survey, to strike or run a
direct line to the southwest corner of the rancho Rincon de la Musulacon, as established by the final survey thereof; but affiant first proceeded to the northeast corner of the approved survey of the said rancho Sotoyome, on the east side of the Russian river and Russian River valley. That affiant was enabled to, and did, ascertain the distance and courses from my said first starting point (SW. corner of Tzabaco) to the last-mentioned point, (NE. corner of "Sotoyome,") by the course and distance of and laid down on the approved map of the north line of "Sotoyome," (the said north line and the said south line of Tzabaco being identical, and it not being usual or cus-

tomary among surveyors to re-run identical lines which have been approved and found correct.)

That from the NE. corner of the rancho Sotoyome, as established by said final survey, I actually ran with chain and compass north, along the range of hills on the east side of Russian river, about (⅔) two-thirds of the distance from said NE. corner to the south line of the rancho Rincon de la Musulacon as before established by the final survey thereof, when I was stopped by night.

That on the next morning I attempted to renew and complete the running of said last-mentioned line, and while proceeding so to
171 do I was interrupted by a large body of armed men, commonly called squatters, who commanded me to desist from making said survey, under threats that if I did not they would hang me, and who forced me under similar threats to give up to them my field-note book of survey; affiant was unarmed and unprotected, and was compelled to, and did, surrender his said field-note book to said lawless and armed band of men, and then and there, under fear of said threats, desisted from the further prosecution of said survey with chain and compass on the ground.

That on each night, while making such survey, affiant had copied and taken from his said field-note book, so taken from him, his note of courses, distances, &c., of the previous day's work, and had at the time said field-note book was taken from him, at the house where he stopped while making said survey, full and accurate copies of all the field-notes and memoranda of survey, and of all the work done by him up to the morning on which he was interrupted by said squatters, as aforesaid.

That said last-mentioned copies were not taken from him by said squatters, but were retained by him, and were used by affiant in making his compilation and return of the final survey of the rancho Tzabaco, as hereinafter stated.

That affiant returned to San Francisco immediately after
172 being interrupted and compelled to desist from making said survey on the ground, as before stated, and then immediately proceeded to make a return of the survey of the rancho Tzabaco from the following data, and in the following manner:

First. By means of the public (U. S.) surveys and township lines which had before then been run and returned to and were on file in the office of the U. S. sur. general for California, affiant ascertained by mathematical calculation the exact course and distance from the northwest corner of the rancho Tzabaco, as laid down and as established by affiant by actual survey on the ground, to the southwest corner of the final survey of the rancho Rincon de la Musalacon. I then prolonged and protracted the south line of the rancho Rincon de la Musalacon to the point which is designated on the patent map "post I, No. 5."

Second. From point on station No. one, on the patent map of Tzabaco, to post I, No. 3, to wit., the NW. corner of the patent map of rancho Tzabaco. I had the exact course and distance by my said

copy field-notes, and the said actual survey by me made, which courses and distances are correctly laid down on the "patent map."

Third. From the southwest corner of the rancho Tzabaco to the SW. corner of ranch Sotoyome I ascertained the distance and course by actual measurement and survey on the ground. And I ascertained
the course and distance from said NW. corner of Sotoyome
173 to the NE. corner of Sotoyome by the maps and field-notes of the final survey of the rancho Sotoyome, then on file in the U. S. surveyor general's office.

I then, by means of the public surveys, also on file in said office, protracted and extended the north line of the rancho Sotoyome, which is also the south line of the rancho Tzabaco, on the course of the said north line of Sotoyome, to a point which is designated on the patent map of rancho Tzabaco as post I, No. 6, and the SE. corner of the rancho Tzabaco.

Fourth. From said last-mentioned corner, No. 6, to post I, No. 5, on the patent map, I ascertained the course and distance by calculation and by means of the said public surveys, so as to include an area of 15,439$\frac{33}{100}$ acres of land, or acres less than 4 leagues of land. I then made a map of such survey, and returned the same to the office of the surveyor general of the U. S. for California, which map was and is exactly similar to the map attached to the patent of said rancho, and, as he believes, he informed said J. W. Mandeville, U. S. surveyor gen'l, of the manner in which I made said survey map and return before he approved of the final survey.

That any practical surveyor can take the patent map of the ranch
Tzabaco, and from the same can ascertain on the ground the
174 exact location of each and every call, course, and distance therein laid down.

That the mode adopted by affiant, as aforesaid, in making said map and return is perfectly accurate, and admits of no mistake, and cannot by any possibility include a greater area of land than is designated in said map.

That any competent practical surveyor, having the same data that affiant had, to wit, the west line, the north line of Sotoyome, and the south line of Musalacon, the connection of the public lines, and the public surveys, and can delineate and lay down on a map, with certainty and precision, the rancho Tzabaco, and ascertain by calculation the exact quantity and area.

And affiant further says, that from the grant and diseño of the rancho Tzabaco, there is and can be no doubt that the line surveyed and adopted by him is the west line of the rancho Tzabaco; nor can there be any doubt that the north line of the rancho Sotoyome is in part the south line of the rancho Tzabaco, and the south line of the Musalacon is in part the north line of the rancho Tzabaco; that the rancho Tzabaco cannot be surveyed and located so as to include more land than is laid down on the map of J. C. Hays, pl'ff's Exhibit G, No. 2, without including the Russian River valley, and that 4 leagues of land cannot be located between the said west, north, and south boundary lines without including the whole of the Russian

175 River valley, and extending east of the Russian river as far as and in the manner laid down on the patent map of the rancho Tzabaco.

That def'ts' Exhibit No. 3, referred to in the answer of def'ts Frisbie and Patterson, shows the lines of said survey actually run by him, and the lines protracted by him, as before stated.

That the range of hills between the Dry Creek valley and the Russian River valley is a low range of hills, and easily driven over in places with a horse and buggy, and is not such a range of hills as deponent understands is meant by the Spanish word sierra.

That affiant has no interest in, direct or indirect, the result of this action, nor in any of the lands embraced in the patent thereof.

C. C. TRACY.

Subscribed and sworn to before me this 11th day of June, A. D. 1860.

CUTLER McALLISTER,
Master in Equity.

Endorsed: Filed June 11th, 1860.

CUTLER McALLISTER, *Clerk.*

176 *Affidavit of Surveyor Von Schmidt.*

In the circuit court of the United States for the district of California, northern district.

THE UNITED STATES, complainants,
v.
THE HEIRS OF T. G. PEÑA *et al.*, defendants. } In equity.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Von Schmidt, being duly sworn, says he is a practical surveyor; that he has no interest in this action; that he has carefully examined the patent map of the rancho Tzabaco and def'ts' Exhibit No. 3; that from the data furnished C. C. Tracy, viz: the survey of the rancho Sotoyome, that of Musalacon and the lines of the U. S. surveys, and the measured west line of "Tzabaco," there is no difficulty in a practical surveyor extending and protracting the lines of the "rancho Tzabaco,' as shown on def'ts' Exhibit No. 3 in this cause, with as much accuracy and certainty as if said lines had actually been run by chain and compass.

That by taking said Exhibit No. 3 there is no difficulty in protracting the line in the manner the same is shown thereon to have been protracted, and computing the quantity of land therein embraced with accuracy and certainty.

A. W. VON SCHMIDT.

Subscribed and sworn to before me this 11th day of June, A. D. 1860.

CUTLER McALLISTER,
Master in Equity.

Endorsed: Filed June 11, 1860.

CUTLER McALLISTER, *Clerk.*

177 *Affidavits of C. Alexander, Jesus Peña, J. O. Farrell, John Knight, and J. P. Leese.*

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Cyrus Alexander, being duly sworn, says that he was born in the State of Pennsylvania, and came to the State of California in the year A. D. 1833; that deponent has resided in the present county of Sonoma since the year A. D. 1841, and within some eight miles of what is known as the rancho Tzabaco or Peña grant, situated in said county of Sonoma; that deponent was well acquainted with Peña, the grantee of the said rancho Tzabaco, and with the occupation thereof by said Peña, and the improvements made thereon by the said grantee from the settlement of the said rancho down to the present time.

Deponent further states, that he has examined carefully the map hereto attached, which purports to be a copy of the map in the expediente in the Tzabaco claim, and that he easily recognizes from said map the face of the county that it is intended to represent; that said copy is correct in the main, except that what is now called Dry Creek valley is much narrower than it appears to be on said map.

178 Deponent states that Peña, in 1843, built a substantial adobe house on Russian river, at or near the point on said rancho which is marked on said map "Ojos de Agua" and "Melpa;" that at or near what is designated as "Melpa" the said Peña had an enclosed and cultivated field; that, according to deponent's recollection, said field was cultivated by the said Peña some two or three years. Deponent further states that the said Peña had for some time an enclosed and cultivated field on the east side of the Russian river and nearly opposite the location of the site of the house above alluded to; that about and in the vicinity of the improvement and enclosure aforesaid, situated on the east side of the Russian river, many of the Indians and vacaros attached to the Tzabaco rancho lived and had their huts and dwellings.

Deponent further states that the said Peña had a house and other improvements occupied by some members of his family located in the valley of Dry creek and on the stream now called Dry creek.

Deponent further states that the cattle and stock of said Peña occupied the lands along Dry creek and along the Russian river, and that said stock was herded as much in the one place as in the other.

Deponent further states that, from the common consent and understanding of the rancheros residing in that neighborhood since the year 1841, the boundaries of the said rancho have been recognized as

being the exterior mountains laid down on the map hereto
179 annexed, except that boundary which divides said rancho from the rancho Sotoyome; and deponent states that this last mentioned boundary which commenced west of Dry creek, and ran easterly along the Sotoyome boundary until it passed the Russian river and corner on the east side of the Russian river about a half mile easterly therefrom, at the same point where the corner of the Sotoyome rancho is found.

Deponent further states, that he was the agent of Henry D. Fitch, who was the grantee of the rancho Sotoyome, and as such agent had the sole charge of the rancho Sotoyome and the stock thereon from the year 1841 to 1845, during which period the said Fitch resided, together with his family, in the county of San Diego; that Peña, the grantee aforesaid, settled, in the first instance, on the rancho Sotoyome, and was informed by deponent that he was on the lands of Fitch and must remove; that said Peña agreed to and did leave; that soon afterwards said Peña had granted to him the said rancho Tzabaco, as deponent was informed, and immediately
180 built and resided thereon; that said Peña, at or about the time alluded to, the said Peña informed deponent that he had obtained a grant for four leagues of land, and that it embraced the valley of Dry Creek and the Russian River valley, and run across the valley the same distance as the Fitch grant.

Deponent further states, that said Peña was present with others of the neighbors at the time judicial possession was given of the rancho Sotoyome, and then claimed his south boundary to be the same as the north boundary of said Sotoyome, and that both ranchos cornered at the same point on the east side of the Russian river.

CYRUS ALEXANDER.

Sworn to and subscribed before me this 24 day of August, A. D. 1858.

W. F. SWASEY, [SEAL.]
Notary Public.

181 (Here follows map, p. 181.)

182 *Affidavit of Jesus Pena.*

CITY AND COUNTY OF SAN FRANCISCO, *ss:*

Jesus Peña, of the county of Sonoma, in the State of California, being sworn, deposes and says, that he is the brother of German Peña, to whom was granted the rancho called Tzabaco, situated in the present county of Sonoma; that deponent is thirty-two years of age, and that he has lived upon the said rancho Tzabaco ever since some time in the year A. D. 1841, and that he resides at the present time on Dry creek, a stream that runs through a portion of said rancho; that deponent has no interest in any of the land claimed to be within the boundaries of said rancho, except about two hundred acres which lie in Dry Creek valley, and are in no way involved in the dispute relative to the proper location of the grant; that depo-

nent's land is within the survey made by Colonel Hays and by Mr. Tracey.

Deponent further states, that he is well acquainted with the boundaries of said rancho; that his information in relation thereto is derived from his long residence thereon, conversations had with his brother, the grantee, and from the general understanding
183 upon the subject among the old settlers in that neighborhood.

Deponent says that he has seen the traced map attached to the deposition of Cyrus Alexander, and examined the same; that said map is substantially correct, but that it represents Dry Creek valley as wider than it is in fact.

Deponent further states, that the southerly line of said rancho was always identical with the northerly line of the Sotoyome rancho; that said southerly line passed across to the eastern side of what is now called Russian river, and what is designated on said map as Rio Grande; that said German Peña always claimed that said boundary crossed said Russian river, and run to the base of the hills lying east of said Russian river, and from thence northerly along said range of hills that lie east of the Russian river.

Deponent further states, that his said brother, in the year 1842, built a house near the place designated on said map as "Ojo de Agua," and that he also, in the same locality, enclosed and cultivated a piece of land designated on said map as "Melpas;" that his said brother, near said "Ojo de Agua," planted and cultivated
184 grape-vines and some trees, some of which are still growing; that said rancho was used for stock purposes, and that the stock belonged to his brother and father, and deponent grazed and herded as much on the lands lying along the said Russian river as the lands lying along Dry creek.

Deponent further says, that for grass some of the vaqueros in the employment of his said brother had their dwellings and lived on the east side of said Russian river, and cultivated more or less of the land immediately adjacent to their said dwellings, and that they so occupied and cultivated as the servants of my said brother.

Deponent further states, that prior to the occupation of this country by the Americans there was never any dispute or contention in regard to the boundaries of the Tzabaco rancho, and that by adjoining land proprietors they were always recognized as those described by deponent as lying on the south and east.

JESUS PEÑA.

Subscribed and sworn to this 11 day of Sept'r, A. D. 1858.

SAM'L HERMANN, [SEAL.]
Notary Public.

185 CITY AND COUNTY OF SAN FRANCISCO, *ss:*

James Fuller, being duly sworn, says that he is well acquainted with both the Spanish and English languages; that deponent carefully and truly interpreted the foregoing deposition to Jesus Peña, prior to his signing and swearing to the same.

Subscribed and sworn to before me, Sept. 11th, 1858.

[SEAL.] SAM'L HERMAN,
Notary Public.

Affidavit of Jas. O. Farrell.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Jasper O. Farrell, being sworn says, that he is a surveyor by occupation; that he arrived in California in the fall of 1843, where he has ever since resided; that he has examined a certified traced copy of the map and juridical possession of the rancho Sotoyome, situated in the county of Sonoma and adjoining the rancho called Tzabaco; that deponent assisted at the giving possession of the said rancho Sotoyome, and recollects among those present at the giving
186 possession thereof, the names of J. P. Leese, two of the Carrillos, Burns, and one of the Peñas, as deponent then supposed, one of the proprietors of said rancho "Tzabaco," all of whom deponent knew to be residents of what was then called Sonoma district, and, as deponent believes, were more or less conversant with the boundaries of the several ranchos in that neighborhood; that the particular duty that devolved upon deponent, in assisting in giving said juridical possession, was to make a plat of the rancho Sotoyome, and to delineate thereon such landmarks as he was directed by the officer giving possession thereof; that the survey was commenced at letter "A," as shown on the aforesaid traced copy, and ended at letter Q, as shown thereon.

At this latter point, having embraced, as deponent supposed, eight leagues of land, he directed that a straight line should be run to letter "A," and that deponent was then directed, as he now recollects, by Jacob P. Leese, the alcalde, to designate the line from "Q" to "A" as the boundary between the Sotoyome rancho and the rancho of Herman Peña; that deponent well recollects that it was the common understanding among those present at the giving said possession, that the line from "Q" to "A" was as well the line of the Sotoyome rancho as the rancho of Herman Peña.

JASPER O. FARRELL.

Subscribed and sworn to before me this 1st day of October, A. D. 1858.

[SEAL.] E. P. PECKHAM,
Notary Public.

187 *Affidavit of J. Knight.*

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

John Knight, being sworn, says that he came to this country in the year A. D. 1847; that he was often in the Russian River valley in the year 1851, and that he resided in said valley for some years; that he has examined the map attached to the deposition of Cyrus Alexander, of the Tzabaco, or Peña rancho; that deponent is acquainted with the said Peña rancho, and states that the said map represents the face of the country called Tzabaco with tolerable accuracy, and fairly shows the exterior lines of said rancho as they have been pointed out to deponent by the original claimants. Deponent further states that, in the year 1852, he went upon the said Peña rancho, and examined the same and its boundaries for the purpose of purchasing a portion thereof; that he tried to purchase from the Peñas, the then owners thereof; that Peña was then living at or near the point on said ranch, marked on the said map "Ojo de Agua," and had improvements and cultivation in the vicinity of his residence.

188 Deponent also states that he made inquiries of others—old residents living in the neighborhood of the said Peña ranch—from all of whom he was informed that the rancho of Peña came down to and crossed on to the eastern side of the Russian-river, and that the southern boundary of the Peña grant was the northern boundary of the Sotoyome rancho.

Deponent further states that he was at that time (1852) informed by the Peñas, also by, to the best of deponent's recollection, Moses Carson, who had charge of the Fitch grant at that time, that the Peña grant embraced four leagues, and that it included the Russian River valley, as well as the valley on Dry creek.

JOHN KNIGHT.

Subscribed and sworn to August 24th, 1858, before me.

[SEAL.] E. P. PECKHAM,
Notary Public.

189 *Affidavit of J. P. Leese.*

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Jacob P. Leese, being sworn, says that he has resided in California since the year A. D. 1833; that in the year 1844 deponent resided in what was then called the Sonoma district, and was the first alcalde thereof; that during the year 1844 deponent gave to H. D. Fitch the juridical possession of what was then and now called the Sotoyome rancho, which rancho adjoins the Tzabaco or Peña rancho; that at the time of giving such possession, the owner of the said Peña

rancho and many others of the rancheros and inhabitants of that neighborhood were present and gave assistance thereat; that it was always customary for parties whose lands adjoined, at the giving of juridical possession, to discuss their respective boundaries and landmarks; that Peña then claimed that his rancho crossed the Russian river and adjoined the Sotoyome lands in the entire length of the dividing line of the two ranchos.

Deponent says that he has examined a certified traced copy of the juridical possession of said rancho Sotoyome; that from "Q" to "A," dotted line on the map thereof, was at said time
190 claimed and conceded in its entire length to be the boundary line of the Peña rancho, and that both ranchos cornered on the east side of the Russian river at the same point, according to deponent's recollection, at the place marked on the Sotoyome diseño as "Arroyo de Pinahase."

J. P. LEESE.

[SEAL.] Subscribed and sworn to before me Oct'r 1st, 1858.
E. P. PECKHAM,
Notary Public.

191 OFFICE OF THE SURVEYOR GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

I, J. W. Mandeville, surveyor general of the United States for the State of California, by virtue of the power vested in me by law, do hereby certify that the next preceding and hereunto annexed pages, numbered from one to fifteen inclusive, exhibit a full, true, and correct copy of the depositions of Cyrus Alexander, Jesus Peña, Jasper O. Farrell, John Knight, and Jacob P. Leese, in relation to the boundaries of the rancho "Tzabaco," finally confirmed to the heirs of J. G. Peña, and also of the original diseño of said "Tzabaco" rancho, the same being of file and record in this office, in the matter of the survey of the said "Tzabaco" rancho.

In testimony whereof, I have hereunto signed my name officially,
[SEAL.] and caused my seal of office to be affixed at the city of San Francisco, this ninth day of June, 1860.

J. W. MANDEVILLE,
U. S. Surveyor General for California.

Examined and found correct.

E. CONWAY, *Chief Clerk.*

Endorsed: Filed June 11, 1860.

CUTLER McALLISTER, *Clerk.*

192 *Order on dist. att'y to show authority.*

In the circuit court of the United States for the districts of California, northern district.

THE UNITED STATES, complainants,
vs.
THE HEIRS OF J. G. PEÑA, dec'd, *et al.*, defendants.
} In equity.

On motion of the defendants by their counsel in the above-entitled cause, it is ordered that Tully R. Wise, acting United States district attorney, show to this court on the 22d day of June, 1860, by what authority he instituted the above suit in the name of the United States against the said defendants.

M. HALL McALLISTER, *Judge.*

Endorsed: I hereby admit due service of the within. June 11, 1860. TULLY R. WISE,
Acting U. S. Dist. Att'y.

Filed June 11th, 1860.

CUTLER McALLISTER, *Clerk.*

193 *Answer to rule to produce authority.*

U. S. circuit court.

THE UNITED STATES
vs.
HEIRS OF J. G. PEÑA *et al.*
} In equity.

And now comes Tully R. Wise, acting district attorney of the United States for the northern district of California, and for answer to the rule heretofore obtained, that he produce his authority for the institution of the above-entitled cause, says:

1. That P. Della Torre, esq., was duly appointed district attorney of the United States for the said district by the President of the said United States, and that he duly qualified and entered upon the duties of his said office according to law.

2. That the said P. Della Torre, district attorney as aforesaid, having been obliged to leave the State of California, did, in accordance with the 14th section of the act of August 16, 1856, (Brightly, 227,) appoint this respondent as his substitute to attend to the business of his said office during his absence.

3. That this respondent accepted said appointment as substitute of the said district attorney, and has since attended and still does attend to the business of the said office.

194 4. That this respondent, as substitute of P. Della Torre, esq., district attorney as aforesaid, instituted the above entitled suit upon information which, in his judgment, was of such a

character as justified him in proceeding against the said defendants prior to receiving special instructions from the Solicitor of the Treasury; but that a copy of the record in the case was forwarded by him to the said Solicitor immediately after said proceedings were instituted, to which no answer or instructions have yet been received.

5. That if the said proceedings have in the opinion of the Solicitor of the Treasury been commenced by this respondent without sufficient cause, then this respondent, under instructions from the said Solicitor, will discontinue the said proceedings; but this respondent avers that at the time of the institution of the said proceedings he acted, and still continues to act, and claims to have the power to act, (until contrary instructions are received from the said Solicitor,) under the 5th article of the instructions of the Solicitor of the Treasury to district attorneys of the United States now in force.

6. This respondent therefore denies the power of the de-
195 fendants herein to invoke the aid of the court through the said rule, it being a question between this respondent and the department at Washington, and not a subject over which this court has jurisdiction; and he therefore prays that the said rule be dismissed.

TULLY R. WISE,
Acting U. S. Dist. Att'y.

Endorsed: Filed June 22, 1860.
CUTLER McALLISTER, *Clerk.*

196 *Decision denying motion for injunction.*

THE UNITED STATES
vs.
THE HEIRS OF J. G. PEÑA.

This is a motion for an injunction on a bill filed by the district attorney U. S., in the name and behalf of the United States, to set aside a patent on the ground of more land having been included in the survey than was authorized by the decree of confirmation; that the same was fraudulently done, and that the defendants, or some of them, knew of and participated in that fraud, and that there was error in the survey, because all the lines were not measured, but some of them made out by protraction, and therefore illegal and void. Lastly, it is alleged that the necessary legal forms and steps to obtain the patent were hurried through with unusual haste and precipitation, without time being allowed for examination, and operated a surprise upon the complainants, by which they were prevented from showing the illegality of the said survey and mistakes contained in said location.

Preliminary to the argument of the motion, the defendants de-
manded the warrant of the district attorney to represent the
197 United States in this case, it being contended that no district attorney could take steps to vacate in behalf of the United

States a survey, unless he was authorized by a previous act of Congress to bring suit. That this court has no jurisdiction of this case.

The district attorney having produced a written statement, which is of file in this case, this court decided that it was sufficient warrant for the institution of this case, and the question of jurisdiction was to be considered on a plea on the final hearing.

The substance of all the allegations in the bill has been given as to the improper location by the surveyor, a fraudulent intent on the part of the surveyor, and the participation in it by defendants, and, lastly, as to the precipitation of the manner in which the patent was made.

These allegations contain the material facts on which, if the complainants have any claim to the interposition of this court, such interposition must rest.

Now the answer positively denies each and every allegation in the bill. It denies, therefore, the whole equity of the bill, and on a motion like the present the court is bound to consider the answer as evidence, to which entire credit is to be given until disproved by two witnesses, or one with corroborative circumstances.—(1 McA., 300.)

198 The ground of the practice (says Judge Story) of dissolving an injunction upon a full denial by the answer of the material facts is, that in such a case the court gives entire credit to the answer upon the common rule in equity, that it is to prevail, if responsive to the bill, until it is overcome by the testimony of two witnesses, or of one and other stringent corroborative circumstances.—(Poor *v.* Carlton, 3 Sumner, 77.)

The only exceptions to the rule are specifically enumerated. They are those of mismanagement of partnership concerns, cases of waste or destructive trespasses, cases of patents for inventions, and cases of irreparable mischief.

There is no allegation of irreparable mischief or of the insolvency of the defendants. The whole allegation which calls for the extraordinary interposition of this court is that the defendants, or some one or more of them, are seeking to dispose of said land, and it is urged that upon the principle of preventing a cloud upon the title, the court should grant an injunction.

Under the statute of this State, similar to one in Kentucky, any person having both the legal title and possession may certainly have a cloud on his title removed, and the opposite party who holds a deed which is no title, may be compelled to cancel it.

199 The Supreme Court say in relation to the statute of Kentucky—It is too important a law of that State to be disregarded in the exercise of the equitable powers of the courts of the United States, and declined to affirm that it could be so fully applied under the constitution of those courts as by the State courts. They expressed their opinion that the protection of the federal court might be affirmed in the case before it.—(Wickliffe *vs.* Owens, 17 How., 47.)

In that case the bill was filed by the holder of the legal title, and he was also in possession; and it was in such case only the court

acted, and they place their decision on the existence of title and possession in the complainant.

In this case the defendants exhibit a patent from the complainants, and thus exhibit a title conclusive against them. They pray for the cancelment of that title on the ground that there has been a fraud (actual or constructive) in the location of the land by the surveyor general. All fraud, mistake, or precipitation in the issue of the patent is responsively denied, and there is an end of the motion for an injunction. The allegation that a sale may be made is not sufficient to bring the case within the principle of a bill to remove a cloud on title, so as to bring this case within the operation of the principle of that.

A cloud upon title is a deed upon which an action at law
200 cannot be maintained with full knowledge of all the circumstances attending its execution. Such deed a court of equity will order to be cancelled. A bill for this purpose is upon the principle of a bill "*ejui a timet*," for fear that such instrument may be vexatiously used "when the evidence to impeach it may be lost, or that it may throw a cloud or suspicion upon the title."

The legal title of defendants is not a cloud, but is the thing to be protected from a cloud.

No case can be found in which, like the present, a grantor has asked the court to set aside his own deed, which certainly passes the legal title, on the ground that it clouds his title in which an injunction has been granted. Indeed, independently of the fact that there is no allegation of irreparable mischief, the court cannot conceive how such can arise. Under the law of this State in relation to *les pendens*, if complied with, the complainants can protect their rights; at all events, under the allegations in the bill and the denials in the answer, this case is not one for an injunction.

There were various affidavits filed in this case by the defendants to support their denials in the answer. No objection was made on
201 the ground that defendants could not, in this case, file the affidavits, but cannot authorize this court to take those affidavits into consideration, as the introduction of such on motions for injunction of such *ex parte* testimony after bill and answer, would bring up, on every such motion, the whole merits of the case in advance of the final hearing.

The motion for injunction is denied on the bill and answer.

Endorsed: Filed July 2, 1860.

CUTLER McALLISTER, *Clerk.*

202 *Notice to set cause for hearing.*

In the circuit court of the United States for the districts of California, northern district.

THE UNITED STATES, complainants,
vs.
JOHN B. FRISBIE and WILLIAM H. PATTERSON, impleaded with José Jesus Peña *et al.*, defendants. } In equity.

Please take notice, that at the opening of the court at the court-room in San Francisco, on Monday, the twelfth (12th) day of November instant, the defendants in the above-entitled action will apply to the court to fix a day for the hearing and trial of the same.
Dated November 9th, 1860.

Yours, &c.,
THORNTON, WILLIAMS & THORNTON,
Atty's for Def'ts.

To Calhoun Benham, esq., U. S. district attorney, Tully R. Wise, esq., late U. S. dist. att'y, acting, Messrs. Thompson, Irving & Pate, esq'r's.

Due personal service of foregoing admitted.
November 9, 1860.

Service accepted, so far as I am concerned.
CALHOUN BENHAM,
THOMPSON, IRVING & PATE.
Nov. 9, 1860.

Endorsed: Filed Nov. 13th, 1860.
CUTLER McALLISTER, *Clerk.*

203 *Order giving U. S. leave to file replication.*

At an extra term of the circuit court of the United States of America for the districts of California, in and for the northern district, held at the court-house in the city of San Francisco, on Monday, the 12th day of Nov., in the year of our Lord one thousand eight hundred and sixty.
Present: The Hon. M. Hall McAllister, judge of said court.

THE UNITED STATES
vs.
HEIRS OF J. G. PEÑA, dec'd, *et al.* } In equity.

And now, at this day, on motion of the U. S. district att'y, it is ordered that the U. S. have leave to file their replication.

Endorsed: Filed this 12th day of Nov., 1860.
CUTLER McALLISTER, *Clerk.*

204 *Order setting cause for Jan'y 8th, 1860.*

At an extra term of the circuit court of the United States of America for the districts of California, in and for the northern district, held at the court-house in the city of San Francisco, on Monday, the 19th day of Nov., in the year of our Lord one thousand eight hundred and sixty.

Present: The honorable M. Hall McAllister, judge of said court.

THE UNITED STATES
vs.
HEIRS OF J. G. PEÑA *et al.* } In equity.

And now, at this day, on motion of solicitor for defendants, and by consent, it is ordered that the said cause be set for hearing on Monday, the 8th day of January, A. D. 1860, at 11 o'clock a. m.

Endorsed: Filed this 19th day of Nov., 1860.
CUTLER McALLISTER, *Clerk.*

205 *Order setting cause for January 14th, 1861.*

In the circuit court of the United States for the districts of California.

THE UNITED STATES
vs.
HEIRS OF PEÑA *et al.* } In chancery.

This case having been set for hearing on Monday, January 7th, 1861, it is hereby stipulated and agreed that the case, with the consent of the court, shall be heard on the 14th day of January, 1861, and shall be considered as set for hearing on that day instead of the day first above mentioned.

December 14th, 1860.

CALHOUN BENHAM,
U. S. Att'y.

Let the argument be assigned for Monday, Jan'y 14th, 1861.
14 Dec., 1860.

M. HALL McALLISTER,
Judge, &c.

Endorsed: Filed Dec. 14, 1860.
CUTLER McALLISTER, *Clerk.*

206 *Order setting cause for Jan. 18th, 1861.*

At a regular term of the circuit court of the United States of America for the districts of California, in and for the northern district, held at the court-house in the city of San Francisco, on Thursday, the 17th day of Jan'y, in the year of our Lord one thousand eight hundred and 61.

Present: The honorable M. Hall McAllister, judge of said court.

THE UNITED STATES
vs.
THE HEIRS OF J. G. PEÑA, dec'd, *et al.* } In equity.

And now at this day come the solicitors for the respective parties hereto, and on motion of solicitors for defendants, it is ordered by the court that the cause be set for hearing Friday, Jan. 18th, 1861.

Endorsed: Filed this 17th day of Jan'y, 1861.
CUTLER McALLISTER, *Clerk.*

207 *Replication.*

In the circuit court of the United States for the districts of California, in the northern district thereof.

THE UNITED STATES
vs.
JESUS PEÑA AND OTHER HEIRS OF GERMAN PEÑA, deceased, *et al.* } Replication.

The replication of the said United States to the answer of the said defendants avers and alleges that, saving and reserving to the said repliants all exceptions which may be had or taken to the various insufficiencies of said answer, and said repliants replying, say, that they will aver, maintain, and prove their bill of complaint to be true, certain, and sufficient, and that said answer of said defendants is uncertain, untrue, and insufficient; all of which matters and things these repliants are, and will be, ready to aver, maintain, and prove as this honorable court shall direct, and they humbly pray as in and by their said bill they have already prayed.

THOMPSON, IRVING & PATE,
Solicitors for the United States.
CALHOUN BENHAM, *U. S. Att'y.*

Endorsed: Filed January 14, 1861.
CUTLER McALLISTER, *Clerk.*

208 *Order of reference to master and setting cause for Feb'y 8th, '61.*

At a regular term of the circuit court of the United States of America for the districts of California, in and for the northern district, held at the court-house in the city of San Francisco, on Friday, the 18th day of Jan'y, in the year of our Lord one thousand eight hundred and 61.

Present: The honorable M. Hall McAllister, judge of said court.

THE UNITED STATES
vs.
HEIRS OF J. G. PEÑA, dec'd. } In equity.

And now at this day come the solicitors for the respective parties into court, and on motion of the solicitor for the defendants, it is

ordered that this cause heretofore set for to-day be set for hearing Friday, Feb'y 8, 1861; and it is further ordered that this cause be referred to the master in equity of this court to take the evidence in this cause, and that such evidence as cannot be taken by said master for want of time, therefore, shall be taken *viva voce* before the court on the hearing of the cause.

Endorsed: Filed this 18th day of Jan'y, 1861.
CUTLER McALLISTER, *Clerk.*

209 *Order contin'g cause till Feb. 18th, 1861.*

At a regular term of the circuit court of the United States of America for the districts of California, in and for the northern district, held at the court-house in the city of San Francisco, on Friday, the 18th day of Feb'y, in the year of our Lord one thousand eight hundred and 61.

Present: The honorable M. Hall McAllister, judge of said court.

THE UNITED STATES
v.
THE HEIRS OF J. G. PEÑA, dec'd, *et al.* } In equity.

And now at this day, on motion of counsel for compl't, it is ordered that this cause heretofore set for hearing to-day be postponed until Monday, Feb'y 18, 1861.

Endorsed: Filed this 8th day of Feb'y, 1861.
CUTLER McALLISTER, *Clerk.*

210 *Order closing testimony and setting cause for Feb. 25, 1861.*

At a regular term of the circuit court of the United States of America for the districts of California, in and for the northern district, held at the court-house in the city of Francisco, on Monday, the 18th day of Feb'y, in the year of our lord one thousand eight hundred and 61.

Present: The honorable M. Hall McAllister, judge of said court.

THE UNITED STATES
v.
HEIRS OF J. G. PEÑA, dec'd, *et al.* } In equity.

And now at this day come the parties to this cause by their respective att'ys, and on motion of sol'r for def'ts, and by consent, it is ordered that the testimony be, and the same is closed in this case, with the exception of that of R. C. Hopkins and Jasper O. Farrell, which may be taken in open court upon the trial of this cause; and it is further ordered that this cause be set for trial on Monday, Feb'y 25, 1861.

Endorsed: Filed this 18th day of Feb'y, 1861.
CUTLER McALLISTER, *Clerk.*

211 *Stipulation in regard to evidence.*

In the circuit court of the United States for the districts of California, northern district.

THE UNITED STATES
v.
THE HEIRS OF J. G. PEÑA *et al.* } In equity.

It is hereby stipulated and agreed in the above-entitled cause that the certified copies of the judicial possession in the case of the rancho Sotoyome, and of the expediente in the case of the rancho Musalacon, shall be admitted as evidence in this cause, and read as such therein, subject to all proper legal objections; said certified copies are annexed as exhibits to the answer of defendants Frisbie and Patterson. It is further agreed that Exhibit No. 3 to the answer of defendants Patterson & Frisbie is also admitted as evidence, subject to the like legal exceptions.

Feb. 25, 1861.

THORNTON, WILLIAMS & THORNTON,
Sol'rs for Patterson and Frisbie.
THOMPSON, IRVING & PATE,
Of Counsel for the United States.

Endorsed: Filed Feb'y 26, 1861.
CUTLER McALLISTER, *Clerk.*

212 *Stipulation in regard to evidence.*

In the circuit court of the United States for the district of California, northern district.

THE UNITED STATES
v.
THE HEIRS OF J. G. PEÑA *et al.* }

It is hereby stipulated and agreed in the above entitled cause that the certified copies of the translation of the original grant and map in the case of the heirs J. G. Peña *et al. vs.* The United States, before the late U. S. land commission, marked Exhibit A to the bill of the complainant in this case; also exhibit B to the same bill, being the deposition of Mariano G. Vallejo, filed in the aforesaid case, before the U. S. land commission; also Exhibit C to the same bill, being the decree of the U. S. land commission in the aforesaid case; also Exhibits D and E, being the decree of the U. S. district court, rendered on appeal in the aforesaid case, together with the stipulation and order dismissing the appeal; also Exhibit G to the same bill, being the original instructions of Surveyor General Mandeville to John C. Hays, deputy surveyor, for the survey of the rancho of Tzabaca, claimed in the aforesaid cause by the heirs of J. G. Peña; also Exhibit G No. 2, being the plat of the survey of said rancho
213 as made by the said Surveyor General Hays; also Exhibit F

to said bill, being the plat of the survey of said rancho, as made by Deputy Surveyor Tracy, and approved by the surveyor general, shall be admitted as evidence therein, and read as such, subject to all proper legal exceptions. It is further stipulated and agreed that the plaintiffs therein may introduce certified copies of the instructions of Surveyor General Mandeville to Deputy Surveyor Tracy; and also of the report of said Mandeville on said surveys, made to the proper department of the government at Washington, subject to like exceptions. It is also stipulated and agreed that proceedings are now pending in the district court of the United States for the northern district of California to set aside, reform, or vacate the survey made in the case of the rancho Musalacon, claimed by Johnson Horner *et al.* as assignees of Francisco Berreyesa, the original grantee in said case. It is further stipulated that this cause may be now submitted, with the understanding that it shall be heard and argued at some future day, to be determined by the court, at which hearing exceptions may be taken to any testimony referred to in any stipulations filed in the case, or to any testimony heretofore taken and filed in said case.

Feb'y 25, 1861.

THORNTON, WILLIAMS & THORNTON,
Sol'rs for Def'ts Patterson and Frisbie.
THOMPSON, IRVING & PATE,
Of Counsel for the United States.

Endorsed: Filed Feb'y 26th, 1861.
CUTLER McALLISTER, *Clerk.*

214 *Order setting cause for April* 22, '61.

At an extra term of the circuit court of the United States of America for the districts of California, in and for the northern district, held at the court house in the city of San Francisco, on Thursday, the 11th day of April, in the year of our Lord one thousand eight hundred and sixty-one.

Present: The honorable M. Hall McAllister, judge of said court.

THE UNITED STATES
v.
HEIRS OF J. G. PEÑA, dec'd, *et al.* } In equity.

And now at this day come the parties to this cause by their respective solicitors, and on motion of J. J. Williams, sol'r for def'ts, and with consent of C. Benham, sol'r for compl'ts, it is ordered that this cause be set for argument on Monday, April 22d, 1861.

Endorsed: Filed this 11th day of April, 1861.
CUTLER McALLISTER, *Clerk.*

215 *Deposition of C. C. Tracey, def'ts' witness.*

Circuit court of the United States for the districts of California, in and for the northern district.

THE UNITED STATES
v.
THE HEIRS OF PEÑA, dec'd.

SAN FRANCISCO, *Jan'y 22d*, 1861.

Be it remembered, that on this 22d day of Jan'y, A. D. 1861, personally appeared before me, Cutler McAllister, master in equity, appointed by the circuit court of the United States for the districts of California, C. C. Tracey, to testify and the truth to say on the part and behalf of the def'ts in a certain suit or matter of controversy now depending and undetermined in the above named court, between the above named parties.

And the said witness being of lawful age, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, did thereupon depose, testify and say as follows, viz:

Present: H. P. Irving, for U. S. dist. att'y; J. J. Williams, for def'ts.

Questions by sol'r for def'ts.

Ques. 1. Your name, age, place of residence, and occupation?

216 Ans. 1. C. C. Tracey; 38 years of age; I reside in San Francisco—am U. S. deputy surveyor.

Ques. 2. Look at the plat of the official survey of the rancho "Tzabaco," finally confirmed to the heirs of S. G. Peña, dec'd, and say by whom and when was said survey made; said plat being marked "Exhibit T."

Ans. 2. This survey was made by myself, under the instructions from J. W. Mandeville, the surveyor gen'l U. S. It was made by me, as deputy U. S. surveyor, in the month of April, 1858.

Ques. 3. State upon what data this survey was made, and upon what paper and record.

Ans. 3. It was made upon the final decree of the U. S. dist. c't, upon the calls of the grant, the diseño, upon the survey of the grant of the "Rincon de Musalacon," on the north, and the approved final survey and juridical possession of the "Sotoyonie" rancho, on the south.

Ques. 4. Had the Soboyonie ranch, on the south, been finally confirmed, surveyed and patented?

Ans. 4. I had been.

Ques. 5. State the commencement point of your survey of the "Tzabaco" rancho, and how from thence you proceeded, with all circumstances connected with your survey of the said rancho.

217 Ans. 5. I commenced at a point a short distance southwest from

the northwest corner of the "Soboyonie," on a prolongation of the north line of the Soboyonie, on the west side of Dry creek, and thence followed the course of the foot of the range of hills on the west side of Dry creek, to a point where the valley of Dry creek is closed in by the hills on each side, becoming a cañon up there where the valley stops, as shown on said official map; thence a short distance northwardly to a point at the foot of the hills on the east side of the valley of Dry creek where I established a station. I then proceeded to the northeast corner of the rancho "Soboyonie," and followed a prolongation of the northern boundary of the "Soboyonie," and then turned and run a line in a northwesterly direction along the sides of the range of hills upon the east side of Russian River valley, in order to connect my lines with the southern boundary of the survey of the rancho Rincon de Musalacon. I had proceeded about two-thirds of the distance on this line, when, on the next morning, as I went to resume my work, I was met by a large body of armed men, some 40 or 50 in number, who threatened me with personal violence if I did not discontinue the survey and deliver to them the field-notes in my possession, which, as I was entirely unarmed and unprotected, I was obliged to do. I had, however, at the con-
218 clusion of each day's work, made a copy of my field-notes and tabled my work, preparatory to a calculation of the area of the tract, which copy of my work was at the house where I had been staying, and did not fall into the possession of this band of men. From this copy of the work, which I had retained, constituting the measurement by course and distance, which I had actually made upon the ground, together with the approved survey of the rancho Rincon de Musalacon, and also of the rancho "Soboyonie," and together with the approved lines of the surveys of the public lands, such as township and section lines, which had heretofore been made and approved, I had such data in my possession as enabled me to calculate the course and distance of the lines which I had not been enabled to run on the ground and connect them with definite points of the survey already made, and from that to make an accurate computation of the area of the tract, and the courses and distances of the survey.

Quest. 6. Had the Musalacon rancho, prior to your survey of this ranch been finally surveyed, and the survey thereof finally approved by the surveyor general?

Ans. 6. It had.

Ques. 7. After the interruption of your survey, as you have
219 stated, could you by the aid of approved public surveys, and the established lines of the Soboyonie and Musalacon ranchos, have closed your survey with accuracy and certainty?

(Objected to as leading.)

Ans. 7. I could.

Ques. 8. Where a line has been established by official survey, is it usual or otherwise, according to the practice of the surveyor general's office, to rerun that line in surveying an adjoining rancho?

Ans. 8. It is not usual, but we are, on the contrary, absolutely

required by our instructions to adopt the official line as part of the regular survey.

Ques. 9. Was any official survey ever made of the Soboyonie rancho under the Mexican government?

Ans. 9. There was an official survey of that ranch made under the Mexican government by Jasper O'Farrell.

Ques. 10. Look upon pages 19 of def'ts' Exhibit No. 5, filed in this case, and state whether or not the plat there exhibited is
220 a true copy of the plat of the survey made under the Mexican government by Jasper O- Farrell, to which you have referred?

Ans. 10. It is.

Examination adjourned until Wednesday, Jan'y 23d, at 10 a. m.

SAN FRANSCISCO, *Jan'y* 23, '61.

Examination of C. C. Tracey this day continued.

Present: J. P. Irving, for the U. S. dist. att'y.; J. J. Williams, for def'ts.

Ques. 11. Was any point or line of division between the Peña ranch and the Soboyonie established at the time that survey and juridical possession was made and given under the Mexican government of the Sotoyonie? If yea, state what it was, and point it out on the official survey of the Peña rancho and on the old survey of the Sotoyonie.

Ans. 11. There was a line of division established at the time that survey was made under the Mexican government; it was a line drawn across Russian River valley from a point on the arroyo Peñabele, on the east side of Russian River valley, across to a point on the west side of Dry creek; the beginning of this line being on the eastern side of the Russian River valley on the Peñabele
221 creek, that is where it runs.

Ques. 12. At the time of executing your survey of the Peña ranch, was or was not your attention particularly directed to the inquiry whether or not any portion of the valley of Russian river was included within the grant to Peña and the diseño referred to therein?

Ans. 12. It was; and from examination of the calls of the grant and the diseño, in connection with the calls of the grants and diseños of the ranchos Rincon de Musalacon and Sotoyonie, and the natural features of the country shown in those respective diseños, and from the record of the juridical possession given of the Sotoyonie rancho, I could come to no other conclusion but that the whole of Russian River valley between the two ranchos above mentioned was to be included within the boundaries of this grant.

Ques. 13. Does your survey of the Peña ranch contain more or less; and if so, how much more or less in acres than four square leagues of land?

Ans. 13. It contains a little less than the four square leagues—about 2,300 acres less.

Ques. 14. Excluding the valley of Russian river, could more land

be surveyed within the boundaries of this ranch than is con-
222 tained in the map of J. C. Hays, filed in this case, and marked comp'ts' Exhibit G No. 2?

Ans. 14. It could not, excluding the valley.

Ques. 15. Look at Exhibit No. 3, to the answer of def'ts Patterson and Frisbie, and state whether or not it shows accurately the connections between the ranchos Musalacon, Tzabaco, or Peña ranch and the Sotoyonie?

Ans. 15. It is.

Ques. 16. Indicate on said Exhibit No. 3 the lines actually run by you on the ground—those assumed or adopted of prior approved official surveys, and those calculated by you?

Ans. 16. The dark green line on the west side of Dry creek was the line actually run by me from No. 1 to No. 3 and from 1 to "live-oak;" from 1 to the northwest corner of the Sotoyonie ranch was the approved line of the "Sotoyonie," which I adopted in my survey; the dark green line, the south boundary of the "Musalacon," was a line which I adopted; the India-ink lines and the red standard line I adopted as approved lines of public surveys, and from the data so obtained the dark green lines in dots were calculated.

223 Ques. 17. Did you inform J. W. Mandeville, U. S. surveyor general, of the manner in which your survey, map, and return were made, and all the circumstances in connection with them prior to his approval of the survey?

Ans. 17. I did.

Ques. 18. Could any practical surveyor take the patent map of the rancho Tzabaco, as made by you, and from the same ascertain on the ground the exact location of each and every call, course, and distance thereon laid down?

Ans. 18. He could.

Ques. 19. Is the mode which you adopted of making said map and return accurate? Does it admit of any mistake? Or could it by possibility include a greater area of land than that designated on the map?

Ans. 19. It is accurate, and admits of no mistake further than such slight errors which are incident to and allowed in all surveys; and the amount embraced is no greater than that shown by the return, with some small fractional difference.

Ques. 20. Could any competent practical surveyor, having the same data, to wit, the lines actually run by you—the north line of the Sotoyonie, the south line of the Musalacon, the connection of
224 the public lines and the public surveys—delineate and lay down on a map the rancho Tzabaco, and ascertain by calculation the exact quantity and area?

Ans. 20. He could do so.

Ques. 21. What is the character of the range of hills within the bounds of the Peña grant between Dry Creek valley and Russian River valley?

Ans. 21. They are a low, rolling range of hills; they can be driven over the most part of them with vehicles.

Ques. 22. State whether or not they were such hills as in your experience and knowledge of Mexican grants and maps were generally denominated by Mexicans as sierras?

(Objected to as leading.)

Ans. 22. They are not.

Ques. 23. Have you ever had, or have you now, interest, claim, or title, direct or indirect, in or to any of the lands embraced within the survey of the "Tzabaco" rancho?

Ans. 23. I have not now, and never have had.

Cross-examination.

225 Ques. 1. You say that the hills lying between the Dry Creek valley and the Russian River valley are a low range of hills. Have you ever taken the elevation of these hills?

Ans. 1. I never have.

Ques. 2. What is the distance from the foot of that range of hills in Dry Creek valley to Russian River valley?

Ans. 2. From two to three miles; some places three, some places two miles.

Ques. 3. Are there any passes from the Dry Creek valley to Russian River valley usually passed over or used as roads?

Ans. 3. There is one that I know of, and there may be more.

Ques. 4. What is the value of the lands contained in your survey embracing these hills as compared with the value of the lands contained in your survey on the plain of the Russian River valley?

(Objected to as irrelevant.)

Ans. 4. They are much inferior to the valley lands.

Ques. 5. Did you see any sign of cultivation on those hills?

226 Ans. 5. I did in a few places.

Ques. 6 Was that cultivation on the lower ranges of those hills, or on the higher?

Ans. 6. I do not recollect distinctly, as they are all low hills, none of them high.

Ques. 7. Were the instructions under which you acted in making these surveys the same as those now shown you as the instructions given to John C. Hayes?

(Objected to, unless the instructions or a copy of them are produced in evidence from the office of the surveyor general.)

Ans. 7. I think they were the same.

Ques. 8. If the instructions given you for your guide had contained only the following words: "the land of which confirmation is made is situated in the county of Mendocino, and is known by the name of the Tzabaco, and is bounded on the southeast by the rancho of Henry E. Fitch, and on the north, east, and west, by the sierra, being located in the valley through which flows the stream known by the name of Tzabaco, and bounded by the hills on each side to the extent of four square leagues, as described in the grant and map con-

227 tained in the expediente," and if you had confined yourself

to the description of the land therein contained, would you have embraced in the survey any portion of the Russian River valley?

(Objected to as irrelevant, hypothetical, and as assuming a fact not in the case.)

Ans. 8. Under those instructions I should have embraced in my survey the same portion of Russian River valley I have already included.

Ques. 9. If you had been instructed to survey the land according to the following extract from the testimony of M. G. Vallejo, "it bounds on the southeast by the lands of the late Capt. Finch ——

(Question withdrawn.)

Ques. 10. Who accompanied you when you made the survey?

Ans. 10. Don Juan Luco and Dr. Frisbie, and I believe those were all, except about fifty squatters and my employés. These persons were not there all the time, only occasionally.

Ques. 11. Did either Frisbie or Luco insist upon your embracing any portion of Russian River valley within the lines of your survey?

228 (Objected to as irrelevant, and because neither of them shown to have any interest in the case whatever.)

Ans. 11. They did not; and if they had I should have paid no attention to them.

Direct examination resumed.

Ques. 1. Is the Dr. Frisbie referred to above the same person as def't Frisbie in this case?

Ans. 1. He is not.

C. C. TRACEY.

(Counsel for the U. S. objects the whole of the above deposition as irrelevant.)

Subscribed and sworn to before me this 23d Jan'y, A. D. 1861.

CUTLER McALLISTER,
Master in Equity.

229 United States circuit court.

UNITED STATES
v.
FRISBIE *et als.* } In equity.

I consent, if it suits the convenience of Messrs. Thompson & Irving, the deposition of C. C. Tracy be taken this afternoon, to be used as evidence in the above-entitled cause.

C. BENHAM, *U. S. Attorney.*

Jan'y 22, 1861.

Endorsed: Filed April 22, 1861.

CUTLER McALLISTER, *Clerk.*

230 *Deposition of John Knight, deft's' witness.*

Circuit court of the United States for the districts of California in and for the northern district.

THE UNITED STATES
vs.
THE HEIRS OF PEÑA, dec'd, *et als.*

SAN FRANCISCO, *Feb'y* 5, 1861.

Be it remembered, that on this 5th day of Feb'y, A. D. 1861, personally appeared before me, Cutler McAllister, master in equity, appointed by the circuit court of the United States for the districts of California, John Knight, to testify and the truth to say, on the part and behalf of the def'ts, in a certain suit or matter of controversy now depending and undetermined in the above-named court, between the above-named parties; and the said witness being of lawful age, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter or controversy aforesaid, did thereupon depose, testify, and say as follows, viz:

Present: R. A. Thompson & C. Benham, for U. S.; J. J. Williams, for def'ts.

Questions by counsel for def'ts.

231 Ques. 1. Your name, age, and place of residence?

Ans. 1. John Knight; age, about 32; I reside in Russian River valley, on the ranch called Sanel.

Ques. 2. When did you first come to this country?

Ans. 2. In 1847.

Ques. 3. Are you acquainted with the rancho Tzabaco and its boundaries; and if so, when and how did you acquire your information?

Ans. 3. I am acquainted with the rancho called Tzabaco. I only know the boundaries of the ranch from hearsay. As near as I recollect, in the year 1851 and 1852 I heard from Fernando Filis, John Parker, and a man named French Lewis, who resided near the ranch of Capt. Fitch in 1851. I also heard from other parties residing in Fitch's house; don't recollect their names. In 1852 Antonio Peña, now deceased, who was the brother of the person whom I heard was the grantee of the ranch, Gusman Peña, who I understood from him was dead, rode over the Russian River valley with me partly for the purpose of showing me what he thought were the boundaries of the rancho. I rode over the rancho with him for the purpose of

232 examining the value of the land, as I wished to buy some of it. He pointed out to me the ridge of mountains on the east side of what is now known as Russian river as being what he called the boundaries of the ranch which he said his brother had left to his family.

(The whole of the foregoing answer objected to as incompetent, irrelevant, and hearsay.)

Ques. 4. How long have you resided in Russian River valley?

Ans. 4. I have resided there most of the time since the fall of 1852, except about 18 months.

Ques. 5. Look upon the certified copy of the original diseño, in "Exhibit A," filed in this cause, and say whether or not it represents, with any tolerable accuracy, the features of that portion of the country, and of the rancho Tzabaco, as you understood its boundaries.

Ans. 5. This diseño seems to me to be a very good representation of that rancho.

Ques. 6. At the time that you were first there indicate on said map where the Peñas were residing.

Ans. 6. I was there for the first time between the months of June and August, 1851. At that time the Peñas, brothers of the
233 grantee, were residing in one adobe house, which is delineated on the map marked "Casa." The first time I was there I did not see this house; I only heard the facts. The first house I saw on it was in another part of the rancho.

Ques. 7. Indicate on said map about the position of the first house you saw on the rancho.

Ans. 7. I saw what I supposed was the ruins of an adobe house on the west side of Russian river, on the Raised hills. There was a spring of water close to it where I watered my horses. It was in Russian River valley, to the north of the house I first spoke of, on or near the exact spot, I think, now occupied by a man named Ely.

Ques. 8. Did you observe any other improvements, or any cultivation, near either of those houses?

Ans. 8. I observed a little patch of ground fenced in by brush or willows, seemingly cultivated near the remains of the house that I saw in Russian River valley. It was situated near the house, a little below it, on the plain.

Ques. 9. At the first time you were there and saw the old house, or the ruins, in Russian River valley, who resided in said house?

234 Ans. 9. I saw some civilized Indians and, I think, a Mexican occupying a brush hut inside, I think, of the brush fence that I have spoken of, and near a spring of water. I did not know then who they were. They then told me they were servants of Peña's. I afterwards ascertained that they were servants of Peña.

Cross-examination.

Ques. 1. Where did you reside before you went to Russian River valley in 1851?

Ans. 1. At San Rafael, Marin county.

Ques. 2. What was your occupation then?

Ans. 2. I was majordomo to Don Timothy Murphy, of the mission of San Rafael. I think I left his service some time in 1852; I do not recollect exactly now.

Ques. 3. Where were you going in 1851 when you first saw the remains of that adobe house?

Ans. 3. I went to the valley of Ukiah, on Russian river.

Ques. 4. Did you, during that trip, make any stay in Russian River valley, below the cañon where Cloverdale is now situated?

235 Ans. 4. I only stopped long enough to either water my horses or make inquiry at the houses, or of any person I met on the road, about the disposition of the Indians in Ukiak valley, except at night; I don't recollect where I stopped at night. I travelled as fast as my horses could carry me without breaking down—only delaying long enough to rest my horses until I got to Ukiah valley, as my business to the Ukiah valley was to take John Parker away from there, who was said to have been wounded or killed by the Indians. He was herding stock up there for Tim Murphy, my employer, and James Black, of Marin county.

Ques. 5. At what time did you first go to reside in Russian River valley?

Ans. 5. I think it was in the month of August, 1352.

Ques. 6. Where did you first settle?

Ans. 6. I settled on the rancho Suñel, where I bought land from Fernando Feliz.

Ques. 7. How far is that above the rancho Tzabaco?

Ans. 7. It is about twenty-eight miles above what is now called the northern boundary of the Peña or Tzabaco ranch, but

236 not as far as Antonio Peña told me and showed me as the northern boundary of the ranch; he pointed to several rocks, perhaps three miles south of the mouth of the cañon.

Ques. 8. Do you recollect a conical hill about 3 miles south of the cañon?

(Objected to as new matter.)

Ans. 8. I recollect a conical hill about that distance; also two conical hills pointed out to me as the dividing line between the Peña and Masalacon ranchos; I think about eight miles below the cañon.

(The latter part of this answer objected to as not responsive to the question.)

Ques. 9. How long did you reside at the place where you first settled at the Feliz ranch?

Ans. 9. The house I first built I resided in about one year. I built other houses, and have lived there, except about 18 months, when I resided in Marin county.

Ques. 10. Did you speak the Spanish language in 1851?

Ans. 10. I did, but not so well as I speak it now.

Ques. 10. Who told you that the Indians spoken of by you in answer to question 9 were servants of the Peñas?

237 Ans. 10. The Indians themselves, at the time I spoke to them, and I think also a Mexican who was there.

Ques. 11. You state afterwards that you ascertained that they were servants of the Peñas. How did you ascertain that fact?

Ans. 11. From the Peñas themselves, from Fernando Feliz, and other parties with whom I conversed on the subject.

Ques. 12. How many Indian huts were then at the point referred to in your answer to question 9?

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Ans. 12. I saw one hut there in which Indians were living.

Ques. 13. Were there not other Indian huts, or huts inhabited by Indians, at other points around the valley at that time?

Ans. 13. There was an Indian village of wild Indians at the place called the Rincon de Masalacon, at the northern termination of the valley at the mouth of the cañon; there was also, I heard, an Indian village on the opposite side of the river from the adobe house. I think I saw it on my return.

238 Q. 14. Was there any other cultivation by the Indians at either of the villages you have spoken of?

Ans. 14. I saw no cultivation until I arrived at the Feliz ranch. I do not recollect seeing any cultivation at the Indian villages. I think I saw some cultivation at the village on the east side of the river in 1852.

Ques. 15. Did you make any attempt in 1852 to purchase other lands than those you purchased on the Feliz ranch?

Ans. 15. I did previous to my purchase from Feliz.

Ques. 16. From whom did you attempt to purchase?

Ans. 16. From Ignacio Pacheco, of Marin county; also from the Peñas on Russian river.

Ques. 17. With which of the Peñas did you attempt to negotiate in 1852?

Ans. 17. Antonio Peñas.

Q. 18. Did you at that time examine or ride over the ranch?

Ans. 18. At or about that time I rode over the ranch with Antonio Peña, called Russian River.

239 Ques. 19. Did he point out the boundaries to you?

A. 19. He did.

Qu. 20. Where did Antonio Peña then live?

Ans. 20. I met him in the Russian River valley, at the house of a civilized Indian named Pascasia, at the Indian village on the opposite side of the river from the adobe house; he said the Indian was his servant, and that he said he resided there at that time.

(Answer objected to so far as it is not responsive to the question.)

Qu. 21. In your affidavit heretofore filed in this case, you stated that Peña was then living, to wit, in 1852, at or near the point on said rancho marked on said map Ojo de Agua, and had improvements and cultivation in the vicinity of his residence. State which of the Peñas you refer to.

Ans. 21. Antonio Peña. There was a mistake in the date in the affidavit; it should have been 1851 and not '52, that I heard that he resided there.

Q. 22. You state in answer to question 7, examination in chief, that the ruins of the adobe house which you saw in 1851 were

240 situated at the exact spot now occupied by a man named Eli. Do you refer to Dr. Eli.

Answer 22. I refer to Dr. Eli.

Ques. 23. Is that the place indicated by the words Ojos de Agua, and referred to in your affidavit?

Ans. 23. That is the place that I supposed I referred to, but can-

not say that on this map it is located correctly in reference to the house on the said map.

Ques. 24. Was that the place at which, according to your correction of the affidavit contained in your answer No. 21, that Antonio Peña resided in 1851?

Ans. 24. That is not the place; it was on the east side of the river that I referred to, when I said that he told me he resided there.

Ques. 25. How, then, do you, in your answer No. 21, correct your affidavit, and state that it was in 1851, instead of 1852, that Antonio Peña resided at the place marked Oja de Aqua?

Ans. 25. I heard in 1851, that he resided there. I knew nothing of my own knowledge. I heard that Peña resided there. I did not know Antonio from the others. It was in 1852 that he told
241 me that he resided on the opposite side of the river.

NOTE.—The witness here wishes to correct his affidavit, heretofore filed in the case, wherein he says, to the best of his recollection, Moses Carson gave him certain information. He now thinks that he was mistaken, and that it was another person, at the house formerly occupied by Mr. Carson; that prior to the time specified in the affidavit, he had had a conversation with Carson in regard to the Peña ranch.

JOHN KNIGHT.

Subscribed and sworn to before me this 5th Feb'y, A. D. 1861.
CUTLER McALLISTER,
Master in Equity.

Endorsed: Filed April 22, 1861.
CUTLER McALLISTER, *Clerk.*

242 *Deposition of C. Bielawski, def'ts' witness.*

Circuit court of the United States for the districts of California, in and for the northern district.

THE UNITED STATES
vs.
THE HEIRS OF PEÑA, dec'd, *et al.*

SAN FRANCISCO, *Feb'y* 5, 1861.

Be it remembered, that on this 5th day of Feb'y, A. D. 1861, personally appeared before me, Cutler McAllister, master in equity, appointed by the circuit court of the United States for the districts of California, Casimer Bielawski, to testify and the truth to say, on the part and behalf of the defendants, in a certain suit or matter of controversy now depending and undetermined in the above-named court between the above-named parties.

And the said witness, being of lawful age, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows, viz.

Present: R. A. Thompson and C. Benham, for U. S.; J. J. Williams, for de'f'ts.

Questions by def'ts' att'y.

Ques. 1. Your name, age, place of residence, and occupation?

243 Ans. 1. Casimer Bielawski; of lawful age; I reside in San Francisco, and am principal draughtsman in the office of the U. S. surveyor.

Ques. 2. Whose duty is it, in said surveyor gen'l's office, to revise the plats and maps of surveys of ranchos finally confirmed?

Ans. 2. It is my duty.

Ques. 3. Did you ever examine and revise the plat and survey of the Peña ranch, commonly called the rancho "Tzabaco?."

Ans. 3. I did.

Ques. 4. Look at the Exhibit No. 3, to the answer of def'ts Patterson and Frisbie, filed in this case, and state what it is, and by whom made?

Ans. 4. It is a map made by myself. I constructed it from all the surveys of township lines, and of the suryeys of the ranchos "Rincon de Musalacon," "Tzabaco," and the Sotoyome ranch. The lines shaded black are township and other lines of public surveys. The lines drawn red represent township lines not surveyed. The exterior boundaries of the Sotoyome rancho are represented by lines shaded brown; The exterior boundaries of the rancho Rincon de

244 Musalacon are represented by lines shaded yellow. The exterior boundaries of the rancho Tzabaco are represented by lines shaded green, of which a part is dotted. These colored lines are shown by the explanation on the map.

Ques. 5. What do the dotted lines shaded green indicate?

Ans. 5. They indicate the lines determined by calculation not surveyed on the ground.

Ques. 6. Could you or could you not, by aid of the approved surveys of the ranchos Sotoyome and Rincon de Musalacon, and the public surveys of the United States on file in the surveyor general's office, and of the lines actually run by Deputy Tracy in surveying the rancho "Tzabaco," accurately calculate the contents in acres of the official surveys and plat of the said Tzabaco rancho?

Ans. 6. I could.

Ques. 7. By taking said Exhibit 3, would or would there not be any difficulty in protracting the lines in the manner the same are shown thereon to have been protracted, and computing the quantity of land therein embraced with accuracy and certainty.

Ans. 7. There would be no difficulty.

245 Ques. 8. Could or could not any practical surveyor, upon the data furnished to said Deputy Tracy—to wit, the survey of the rancho Sotoyome, that of the Musalacon, and the lines of the U. S. surveys, and the surveyed western lines of the Tzabaco—extend and protract the other lines of the rancho Tzabaco, as shown by dotted lines on said "Exhibit No. 3," with as much accuracy and certainty as if said lines had been actually run by chain and compass?

Ans. 8. He could.

Cross-examination.

Ques. 1. By whom was the plat shaded in green, representing the rancho Tzabaco, originally made?

Ans. 1. I think the original from which that portion of exhibit was copied was made, I think, by Tracy. It was returned by him to the office, and then I completed it.

Ques. 2. What part of said original plot was made by Tracy, and what part by you in completing it?

Ans. 2. Tracy returned the plat, as the plat of every survey is returned, and my duty was to examine and complete it as in
246 every other case.

Ques. 3. Did you make any change or alteration in the survey as returned by Tracy; and if so, in what did such change or alteration consist?

Ans. 3. So many maps pass through my hands that I cannot recollect the changes I made in it, if any.

Ques. 4. Did you make any change in the length or direction of any of the lines?

Ans. 4. I cannot recollect; it is two or three years ago, I think, since it passed through my hands.

Ques. 5. Have you in the office of the surveyor gen'l the original plat returned by Tracy?

Ans. 5. We have. (The witness here produced the original plat returned into the office by Deputy Tracy.)

Ques. 6. Take this original plat now produced by you, and compare it with the plat of the same ranch as made by you and attached to Exhibit No. 3, and state what change you made in said plat?

Ans. 6. As far as I can recollect, I made no other change but those of completing the topography on Tracy's map. I did not
247 change the lines, because we can make no change of that character in the office. I filled out the topography, as I am making myself acquainted with the topography of California, so as to make a complete map of California, which is the duty of our office.

Ques. 7. By what data were you enabled to lay down the topography of the country on Tracy's map?

Ans. 7. From the field-notes of surveys on file in the U. S. surveyor general's office.

Ques. 8. You stated, in answer to question 6, that you could, from the data therein given, ascertain the quantity of land embraced within the map, and was going on to state that the quantity would be less, and you had to add, when you were stopped. Please explain what you meant by "the quantity would be less, and you had to add?"

Ans. 8. From the data given in the question I could ascertain the quantity which those lines would contain. (SW. of a line drawn from the SE. corner of Musalacon to the most northern point of Sotoyome.) In order to ascertain the quantity in that survey, lines would have to be protracted from the data given.

Direct examination resumed.

Ques. 1. Do you not, in prosecuting the duties of your office, complete all other official plats in the same way that you did this?
Ans. 1. I do.

CASIMER BIELAWSKI.

Subscribed and sworn to before me this 5th Feb'y, 1861.
CUTLER McALLISTER,
Master in Equity.

Endorsed: Filed 22 April, 1861.
CUTLER McALLISTER, *Clerk.*

248 *Deposition of Ed. Conway, def'ts' witness.*

Circuit court of the United States for the districts of California in and for the northern district.

THE UNITED STATES
vs.
THE HEIRS OF PEÑA, dec'd, *et al.*

SAN FRANCISCO, *Feb'y* 5, 1861.

Be it remembered, that on this 5 day of February, A. D. 1861, personally appeared before me, Cutler McAllister, a commissioner appointed by the circuit court of the United States for the districts of California, under the laws of the United States, to take affidavits and acknowledgments of bail, &c., &c., Edward Conway, to testify and the truth to say, on the part and behalf of the defendants, in a certain suit or matter of controversy now depending and undetermined in the above-named court between the above-named parties.

And the said witness, being of lawful age, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows, viz.

Present: R. A. Thompson and C. Benham, for U. S.; J. J. Williams, for defendants.

Edward Conway, being duly sworn, deposes and says that he
249 is the chief clerk in the United States surveyor general's office of California; that in the months of October and November, 1858, he was examiner of surveys in said office; that by steamer of 20th of October, 1858, Mr. Mandeville left for Washington; that previous to his departure he left instructions with deponent as to the preparation and forwarding to him at Washington all the suspended cases of surveys of private ranchos; that one of this class of cases was the "Tzabaco" survey, which he directed should be sent to him for the purpose of laying the whole subject before the dapartment. He also directed that copies of all the papers, evidence, briefs, &c., filed by all parties, should be also forwarded, and that due notice

should be given to Judge Thompson, attorney for contestants, so as to enable him to forward, at the same time, any papers that he might wish; that such notice was given by deponent's order, and Judge Thompson, at his own request, was allowed all the papers filed by the opposite parties for his supervision; that to give the contestants full opportunity, a postponement of the steamer was had, and in the month of November, as deponent believes, the survey, with copies of all papers on file, were forwarded as directed by the surveyor general; that subsequently, after Mr. Mandeville's return from
250 Washington, a correspondence was had in relation to said survey, copies of which are annexed to this deposition.

That the further report demanded by the department was duly prepared, and notice in writing was given to Judge Thompson that said report would be forwarded, a copy of which is also hereto annexed.

That from the date of said report the survey could have, at any time, been ordered into the U. S. district court for examination upon the proper application made by either the district attorney or attorney for claimants; and that it is not customary for the surveyor general's office to give notice to attorney as to the proper time or mode of conducting their business.

Cross-examination.

Ques. 1. Do you not recollect that after the notice referred to in your examination in chief, given by you to Judge Thompson of your intention to forward immediately to Washington the survey in this case, that he objected to the evidence taken on the part of the claimants in the form of affidavits being sent on, on account of its being ex parte, and no opportunity allowed for cross-examination, or taking or rebutting testimony?

Ans. 1. I think he did.

Ques. 2. Do you not recollect further, that after you had
251 informed Judge Thompson that your instructions were peremptory to send on all the papers filed in the case, that Judge Thompson then requested that he might be allowed time to take rebutting testimony; that you replied that it could not be laid over for more than one steamer, in reply to which Judge Thompson stated that the parties interested lived more than one hundred miles from the city of San Francisco, and that it would be impossible to procure the testimony in that time, and that he would therefore content himself with filing the protest, a copy of which, marked "Exhibit No. 1," is hereto annexed as a part of this deposition, which protest was afterwards forwarded to Washington?

Ans. 2. I do not recollect all of said conversation. I was obliged, by instructions from Mr. Mandeville, to forward all these surveys within a certain time. This protest referred to in question was filed in the office Oct. 27, 1858, and a copy forwarded with the papers to Mr. Mandeville in Washington. The papers were detained one steamer. The steamers left then twice a month, 5th and 20th days of each month.

Ques. 3. Do you not recollect that when you informed Judge Thompson that you could not take the responsibility of de-
252 taining papers more than one steamer, that he then told you that that time would not be sufficient to take the testimony, and instead of taking it filed the protest?

Ans. 3. I do not remember the grounds of Judge Thompson's objections to forwarding the survey, except from the written objections which have been annexed to this deposition.

Direct examination resumed.

Ques. Look upon the document now shown you, marked official correspondence, and annexed as Exhibit No. 2 to the answer of Patterson and Frisbie in this case, and say whether or not it is a true, full, and accurate copy of the originals on file in the surveyor general's office.

Ans. It is.

EDWARD CONWAY.

Subscribed and sworn to before me this 5th Feb'y, A. D. 1861.

CUTLER McALLISTER,
Master in Equity.

253 The undersigned, attorneys for the settlers in the Russian River valley, who are resisting the extension of Peña or Tzabaco claim over that valley so as to include the public lands on which they have settled under the pre-emption laws of the United States, object to the annexed depositions of Cyrus Alexander, Jesus Peña, Jasper O'Farrell, Jacob P. Leese, and John Knight being read or considered on the question of the location of said claims.

1st. Because they were taken before a notary public in the city of San Francisco, instead of being taken before the surveyor general.

2d. Because they were taken without notice to the opposing parties or their attorneys.

3d. Because the parties now holding the claim, after having given notice to take depositions before the surveyor general, failed to attend at the time and place appointed, and also on a subsequent day to which the taking of the depositions was adjourned by that office, of which they had due notice, on both of which occasions the undersigned, as attorneys for the above-mentioned settlers, were in attendance, prepared to cross-examine the witnesses and to in-
254 troduce counter testimony if deemed necessary.

4th. Because the subsequent taking of the depositions privately and without notice, before a notary public in the city of San Francisco, when the office of the surveyor general was at all times open to them, and that officer ready and willing to take the testimony, shows a disposition on the part of the owners of the claim, and has had the effect to cut off their opponents from all opportunity to cross-examine the witnesses, in order to show their interest or any other circumstance tending to invalidate their testimony.

5th. Because as to the deposition of Jesus Peña, it appears from his own statement and the record of the land commission that he is one of the brothers and heirs-at-law of the original grantee, and also one of the original claimants before the commission, and is consequently a party in interest, and not competent as a witness.

THOMPSON, IRVING & PATE,
Attorneys for Settlers.

Endorsed: Filed April 22d, 1861.
CUTLER McALLISTER, *Clerk.*

255 *Deposition of C. Alexander, def'ts' witness.*

Circuit court of the United States for the districts of California in and for the northern district.

THE UNITED STATES
vs.
THE HEIRS OF PEÑA, dec'd, *et als.*

SAN FRANCISCO, *Feb'y* 6, 1861.

Be it remembered, that on this 6th day of February, A. D. 1861, personally appeared before me, Cutler McAllister, master in equity, appointed by the circuit court of the United States for the districts of California, Cyrus Alexander, to testify and the truth to say on the part and behalf of the defendants in a certain suit or matter of controversy now depending and undetermined in the above-named court between the above-named parties.

And the said witness, being of lawful age, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows, viz:

Present: R. A. Thompson and C. Benham, for U. S.; J. J. Williams, for defendants.

Questions by J. J. Williams.

Ques. 1. What is your name, age, and place of residence?

256 Cyrus Alexander; 55; Russian river, Sonoma county, on the Sotoyome ranch.

Ques. 2. When did you first come to this country?

Ans. 2. In 1833.

Ques. 3. When did you first settle on the Sotoyome ranch?

Ans. 3. In 1841.

Ques. 4. Under what circumstances and for what purpose did you settle there?

Ans. 4. For to take charge of the Sotoyome ranch for Mr. Fitch. Lived on it, and attended to the business of the ranch as his agent, and continued to act as his agent till 1845.

Ques. 5. After 1845, where did you reside to the present time?

Ans. 5. In payment of my services he was to give me part of the same ranch, which he did, and I have resided there ever since.

Ques. 6. Did any rancho adjoin the Sotoyome on the north? If so, what ranch?

Ans. 6. Ranch of German Peña.

Ques. 7. Were you living on the Sotoyome ranch when
257 juridical possession was given of the same; and if so, were you present at that time?

(Question objected to as irrelevant.)

Ans. 7. I was present when juridical possession was given, and was living on the Sotoyome ranch.

Ques. 8. Who else was present?

Ans. 8. Jacob P. Leese, Jasper O'Farrell, Julio Carillo, Frank Bedwell, and some others that I do not recollect at present.

(Question and answer objected to as irrelevant.)

Ques. 9. Were any of the Peñas there? If yea, whom?

(Objected to as leading.)

Ans. 9. I am not positive, but I think German Peña was there.

Ques. 10. Where, in giving juridical possession, did the alcalde commence?

(Objected to as irrelevant.)

Ans. 10. At the arroyo Peñabete.

Ques. 11. Which way from that point did they run?

(Objected to as irrelevant.)

258 Ans. 11. Commenced there, and run down the low hills on the east side of Russian river.

Ques. 12. Which side of the Russian river is the arroyo Peñabete?

Ans. 12. On the east side.

(Question and answer objected to as irrelevant.)

Ques. 13. Please describe the next course they ran?

(Objected to as irrelevant.)

Ans. 13. They ran a southeast course from the arroyo Peñabete down to the letter I.

Ques. 14. Look at the map contained in defendants' Exhibit No. 5, purporting to be a diagram of the measurement of the rancho Sotoyome, and point out on said map where the letter I is.

(Objected to as irrelevant.)

Ans. 14. At the point marked on the map Tres Penasbios.

Ques. 15. Describe the way they run around the other sides of the ranch with reference to the said map.

(Objected to as irrelevant.)

259 Ans. 15. Thence they ran to the southwestern corner of the ranch; from thence to letter Q on said map; thence to the point of beginning, crossing Russian river.

Ques. 16. State what occurred, if anything, and what was said, if anything, by the colindantes, and other persons interested, at the starting point marked on said map, arroyo Peñabete, letter A, in relation to the boundaries of the Sotoyome and Peña ranchos.

(Question objected to as irrelevant, incompetent and leading.)

Ans. 16. It was understood that that was the northern line of Fitch's ranch—that was the south boundary of Peña's.

(Answer objected to as mere hearsay.)

Ques. 17. Were you well acquainted, or otherwise, with Peña's rancho and its boundaries?

(Question objected to because it is incompetent to prove boundaries in this manner.)

Ans. 17. I was acquainted with it on the south line, which was Fitch's rancho; and on the east line, which is the foot-hills on the eastern side of Russian river; and on the western side, the foot-hills on the western side of Dry creek.

Ques. 18. Did Peña ever live on this ranch?

Ans. 18. Yes.

260 Ques. 19. Had he any cultivation on said ranch, or any other improvements on it? If yea, where?

Ans. 19. He had a house on Dry creek, and cultivated there; on Russian river likewise.

Ques. 20. Can you indicate about the point on Russian River valley where his house and cultivation were?

Ans. 20. It was where Dr. Eli now lives, and cultivated on the east side of the river opposite that place.

Ques. 21. Look upon a copy of an original diseño in Exhibit E, heretofore filed in this case, purporting to be the map of the Peña rancho, and point out, if you can, the localities to which you have just referred.

Ans. 21. Near the point marked Oja de Agua Peña lived and cultivated.

Ques. 22. Had Peña any cattle on the ranch; and if so, where did they range, and where were his rodeo grounds, if he had any?

(Question objected to as leading.)

Ans. 22. He had cattle; they ranged both on the Russian River valley and Dry Creek valley. The rodeo was in Russian River valley, a little above the house.

261 Ques. 23. Is German Peña's house in Russian River valley now standing?

Ans. 23. I think it is not.

Ques. 24. Are there any indications of its former site?

Ans. 24. Yes; I think there must be the ruins of the house—its walls, &c.

Ques. 25. When did German Peña first reside in this house in Russian River valley, and how long did he continue to reside there?

Ans. 25. He must have been there in 1843 or '4; I don't recollect how many years, but a considerable length of time.

Ques. 26. Do you know whether or not German Peña had in his employ on this rancho any Indians or other servants?

Ans. 26. He had a large number of Indians.

Ques. 27. Where did these Indians reside?

Ans. 27. Their principal place was on the east side of Russian river, where they cultivated.

Ques. 28. Did you ever attend any of the rodeos on this ranch?

Ans. 28. Yes, I attended one.

Ques. 29. Where were the cattle herded on that occasion?

262 Ans. 29. A little above the house where they lived, in Russian River valley. I think this was in 1844.

Ques. 30. What sort of house was it that Peña built in Russian River valley, and in which he resided.

Ans. 30. It was built of adobe.

Cross-examination.

(Before proceeding to cross-examine, the counsel for the United States object to the whole of the foregoing deposition, upon the grounds that while the same would have been proper testimony before the board of commissioners, or the district court, for the purpose of establishing other boundaries than those set out in the decrees of those tribunals, it is incompetent for the purpose of changing or enlarging the boundaries therein established.)

Ques. 1. Where did German Peña reside when you first settled in Russian River valley, in 1841?

Ans. 1. He resided in Sonoma.

263 Ques. 2. At what time did he first come to reside in Russian River valley.

Ans. 2. I think in 1843 or '4.

Ques. 3. Don't you know that he was residing there in 1842?

Ans. 3. No, I don't know.

Ques. 4. Are you positive that he was not residing there in 1842?

Ans. 4. I am pretty certain that he was not; I think he was there in 1843.

Ques. 5. Which of the two houses were first built—the one on Dry creek or the one on Russian River valley?

Ans. 5. The one on Dry creek.

Ques. 6. In what year was that house built?

Ans. 6. I think it must have been in 1843; I don't recollect in what time of year it was built. It was an adobe house.

Ques. 7. Who occupied that house when it was first built?

Ans. 7. I think the whole family; the old man and his sons, including German Peña.

264 Ques. 8. When was the house in Russian River valley built?

Ans. 8. I think in 1844.

Ques. 9. Who first occupied that house?

Ans. 9. The whole family seemed to occupy at the time I attended the rodeo, including German Peña. They all seemed to be living in the house at Russian river. Both establishments were kept up by the family.

Ques. 10. Where were the family residing in the summer of 1846?

Ans. 10. They were on Dry creek in 1846.

Ques. 11. When did you first know the hills on the eastern side of Russian river as the boundary of the Peña ranch?

Ans. 11. At the time Fitch's ranch was surveyed.

Ques. 12. How did get your information?

Ans. 12. From German Peña, alcalde, or justice of the peace, Jacob P. Leese.

Ques. 13. Did not the cattle of German Peña range indiscriminately in the valleys of Dry creek and Russian river from the Fitch line up to the cañon?

265 Ans. 13. There was some on Dry creek, but the principal part on Russian river. They ranged up to the cañon.

Ques. 14. At what time did the house in Russian River valley cease to be inhabited?

Ans. 14. I don't know exactly; it must have been prior to the summer of 1846.

Ques. 15. Were there not several Indian rancheros between the Fitch line and the cañon from 1843 up to 1846.

Ans. 15. There might have been; it was very seldom I passed up the cañon. There was one near the mouth of the cañon.

Ques. 16. Did they cultivate any ground?

Ans. 16. Very little, except for the Peñas.

CYRUS ALEXANDER.

Subscribed and sworn to before me this 6 Feb'y, A. D. 1861.

CUTLER McALLISTER,
Master in Equity.

Further examination of witnesses adjourned till 11 o'clock to-morrow, the 7th instant.

Endorsed: Filed 22d April, 1861.

CUTLER McALLISTER, *Clerk.*

266 *Deposition of P. McChristian, compl'nts' witness.*

Circuit court of the United States for the districts of California, in and for the northern district.

THE UNITED STATES
vs.
THE HEIRS OF PEÑA, deceased.

SAN FRANCISCO, *7th February*, 1861.

Be it remembered, that on this 7th day of February, A. D. 1861, personally appeared before me, Cutler McAllister, master in equity, appointed by the circuit court of the United States for the districts of California, Patrick McChristian, to testify and the truth to say on the part and behalf of the defendants in a certain suit or matter of controversy now depending and undetermined in the above-named court between the above-named parties.

And the said witness, being of lawful age, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows, viz:

Present: H. P. Irving, for U. S. att'y; J. S. Williams, for def'ts.

Questions by def'ts' sol'r.

Ques. 1. What is your name, age, and place of residence?

267 Ans. 1. Patrick McChristian; 30 years; Bodega, Sonoma county.

Ques. 2. How long have you resided in Sonoma county?

Ans. 2. Since the latter end of 1846.

Ques. 3. Are you acquainted with those portions of the valleys, Russian River and Dry Creek, claimed under the approved survey, filed in this case, to belong to the Peña Tzabaco ranch; and if so, how long have you done so?

Ans. 3. I am not well acquainted with the valley; I only passed through it in 1846; I passed through there twice since; I camped there, in 1848, at what is called Dr. Eli's farm.

Ques. 4. Is the place that you call Dr. Eli's farm the place where Dr. Eli now lives?

Ans. 4. Yes.

Ques. 5. In 1846, in passing through the valley, how near did you pass to the place now known as Dr. Eli's?

Ans. 5. The trail that I travelled then is near the present road; I should think about 3 or 400 yards; certainly not much over 400 yards.

268 Ques. 6. Describe the place where Dr. Eli's house now stands with reference to the plain below.

Ans. 6. The house is on the top of a little hill—a kind of a little rise; his vineyard is at the foot of the hill; and the farm runs down to the plain.

Ques. 7. From the trail where you passed in 1846, was that bluff or hill, where the house is now situated, in full view?

Ans. 7. Yes.

Ques. 8. Did you or did you not at that time observe at or near that point any house or sign of cultivation?

Ans. 8. I did not see any cultivation or any house; if the house had been there, and had a roof on, I should have seen it. I saw no house after I passed Fitch's till I got to the cañon.

Ques. 9. Did you see at any other point between Fitch's and the cañon any cultivation?

Ans. 9. No.

Ques. 10. State when you passed there in 1848, and camped near where Dr. Eli's house now stands, whether you then saw any

269 house or sign of cultivation at that point?

Ans. 10. No; I saw no sign of house or cultivation. I did not go up on the hill; if there had been a house more than a foot high I think I should have seen it.

Ques. 11. Did you see any marks or evidences of former cultivation?

Ans. 11. No; I did not notice any.

Ques. 12. Is there or is there not a spring or small stream of water flowing out of the hill near Dr. Eli's house?

Ans. 12. I don't know whether it flows out of that hill or not;

about 300 yards from Dr. Eli's house there was a small stream where we found plenty of water when we camped.

Ques. 13. On either of the two occasions of which you have spoken of having passed up Russian River valley in 1846 or 1848, did you observe any Indian huts or rancheria; and if so, at what points in the valley did you see them?

Ans. 13. In 1846 I did not see any Indian huts or rancheria, except about 3 miles above Fitch's; I don't recollect seeing any in
270 1848.

Ques. 14. Between Fitch's ranch and the cañon did you observe any bands of cattle other than the cattle belonging to the Alexander or Fitch ranch?

Ans. 14. I observed cattle between Fitch's ranch and the cañon.

Ques. 15. Were you acquainted at any time with the family of Peñas; and if so, when did you become acquainted, and where did they reside?

Ans. 15. I became acquinted with them in 1846; they resided on Dry creek.

Ques. 16. How far from the place that Dr. Eli now lives?

Ans. 16. I don't know how far it is; I never crossed over from Dry creek to the place where Dr. Eli lives.

Ques. 17. You say crossed over. What do you mean by that expression? Crossed over what?

Ans. 17. Crossed over a few rolling hills between Dry creek and Russian River valley.

Ques. 18. What is the character of the country generally from the cañon down to Fitch's line between Russian River and Dry Creek valleys?

Ans. 18. It is mountainous between the two; some places high; some places low. There is good range over some of them.
271 I have my cattle between Dry creek and Cloverdale, on the mountains.

Ques. 19. Have you any means of knowing what quantity of stock the Peñas had on that ranch about the latter part of 1846?

Ans. 19. I don't know exactly. I should judge about 100 head or 150. I don't know whether I saw them all. I don't exactly whether they had that amount.

Ques. 20. Was that considered in those days as a large or small quantity to have on a ranch?

Ans. 20. In those days a small quantity.

Ques. 21. What amount of land of the character of that embraced in the valleys of Dry creek and Russian river and adjoining hills, would be sufficient to pasture the amount of stock then held by the Peñas?

Ans. 21. I don't know what amount. I should think there was enough in the valley in which he lived to pasture the cattle he had.

Ques. 22. When you were at the Peña ranch in 1846, was German Peña then living, or did you know German Peña as distinguished from his other brothers?

272 Ans. 22. Yes; he was living then.

Ques. 23. State when and where German Peña died?

Ans. 23. He died in Sonoma. I don't know when. I think it was shortly after the war.

Cross-examination.

Ques. 1. Is there a dividing range between Dry creek and Russian river, the cañon and Fitch's line—a ridge of mountains or rolling hills?

Ans. 1. Some rolling hills, and some parts higher than others.

Ques. 2. When did Dr. Ely first settle where he now resides?

Ans. 2. I don't know when he first settled there; I heard that he settled there about 1851.

Ques. 3. How long were you at Peña's house, in 1846, upon the occasion to which you have referred?

Ans. 3. A night and half a day. I came in the evening and left somewhere about 12 or 1 next day.

Ques. 4. Upon the occasion of your passing up Russian River valley in 1846, where were you going, and from what point did
273 you start on your journey?

Ans. 4. I started from the town of Sonoma; when I started I did not know where I was going and camped where night found me; it was more of a hunting expedition; a party of us took our guns with the intention of *of* going to Russian river.

Ques. 5. Do you think at this day you can recollect every house or hut, cultivated patch, or field, you passed on that occasion in all your rambles?

Ans. 5. No; I dont't think I could. I think I could recollect from Fitch's up to Fernando Feliz's, I think I could up to Fernando Feliz's, but not all the way from Sonoma.

Ques. 6. What is your occupation?

Ans. 6. Farmer; on my own land; under a Spanish grant.

PATRICK McCRISTAN.

Subscribed and sworn to before me this 7th Feb'y, 1861.

CUTLER McALLISTER,
Master in Equity.

Endorsed: Filed April 22, 1861.

CUTLER McALLISTER, *Clerk.*

274 *Deposition of Emsley Eliot, compl'nts witness.*

Circuit court of the United States for the districts of California, in and for the northern district.

THE UNITED STATES
vs.
THE HEIRS OF PEÑA, deceased.

SAN FRANCISCO, *February* 7, 1861.

Be it remembered, that on this 7 day of Feb'y, A. D. 1861, personally appeared before me, Cutler McAllister, master in equity, ap-

pointed by the circuit court of the United States for the districts of California, Emsley Elliott, to testitify and the truth to say, on the part and behalf of the defendants, in a certain suit or matter of controversy now depending and undetermined in the above-named court between the above-named parties.

And the said witness being of lawful age, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, did thereupon depose, testify, and say, as follows, viz :

Present: H. P. Irving, for U. S. attorney; J. J. Williams, for def'ts.

Questions by sol'r for def'ts.

Ques. 1. What is your name, age, place of residence, and occupation?

275 Ans. 1. Emsley Elliott; 34; Mendocino county; farmer, stock raiser.

Ques. 2. How long have you resided in California?

Ans. 2. Since 1845; about the fall of that year.

Ques. 3. Are you acquainted with those portions of the Russian River and Dry Creek valleys extending from the Fitch line to the Russian River cañon?

Ans. 3. I am.

Ques. 4. How long have you been acquainted with those valleys?

Ans. 4. Since 1846, in June or July, to the best of my recollection.

Ques. 5. What was the occasion at that time of your visit to Russian river?

Ans. 5. Hunting Spaniards.

Ques. 6. State what you mean by hunting Spaniards; and what was the nature of the expedition?

Ans. 6. We understood that the Spaniards were getting together to form a company to attack us, the Bear Flag Company.

Ques. 7. State whether on that expedition you entered

276 Russian River valley, and where you entered?

Ans. 7. We came to Russian river and to a valley called Ukiah valley; from there we came down Russian river to Fitch's ranch, and from there to Sonoma.

Ques. 8. Do you know the place where Dr. Ely lives in Russian River valley?

Ans. 8. I do.

Ques. 9. In passing down the Russian river on the occasion you refer to, how near the place did you pass where Dr. Ely lives?

Ans. 9. I can't tell exactly; as near as I could come to it from 2 to 400 yards.

Ques. 10. Do you recollect seeing at that time a spring or stream of water near the place where Dr. Ely lives?

Ans. 10. I don't recollect noticing at that time a spring of water.

Ques. 11. Did you notice at that point or near that point, or its vicinity, a house or any signs of cultivation?

Ans. 11. I did not.

277 Ques. 12. How do you ascertain now from your recollection, that you passed within 2 to 400 yards of D. Ely's house?

Ans. 12. By the gap and points of the mountains, and the shape of the valley.

Ques. 13. Was there a trail passing down the valley, which you followed?

Ans. 13. There were Indian trails; sometimes we were in them, and sometimes kept our course.

Ques. 14. If there had been any house where D. Ely's is now situated, could you, when you passed, have seen it?

Ans. 14. I think I could.

Ques. 15. Did you see at that time any house from Russian River valley, from the mouth of the cañon, down to Fitch's ranch?

Ans. 15. I did not.

Ques. 16. Did you observe in the valley any signs of cultivation between those points?

Ans. 16. I did not.

Ques. 17. Did you observe at the place where Ely's house is now situated, or its vicinity, any Indian huts or rancheria?

278 Ans. 17. I did not.

Ques. 18. Did you, or did you not, during the same expedition, visit the valley of Dry creek?

Ans. 18. I did.

Ques. 19. Did you find any house or sign of cultivation in that valley?

Ans. 19. I did.

Ques. 20. In what direction and how far, as near as you can judge, from the place where D. Ely's house is now situated?

Ans. 20. It is south of west, as near as I can guess, from 2½ to 3 miles. I just passed over it, and I can't say positively.

Ques. 21. What kind of a house was it?

Ans. 21. Adobe house.

Ques. 22. Who occupied that house?

Ans. 22. The family of the Peñas.

Ques. 23. Did you see any cultivation in Dry Creek valley?

Ans. 23. I did.

279 Ques. 24. What quantity of land, and how far from the house?

Ans. 24. I can't say what quantity of land; it was near the house; I merely noticed it as I passed by.

Ques. 25. What is the character of the country between Russian River valley and Dry creek?

Ans. 25. There are ranges of mountains covered with timber; a portion of them have chemsal brush.

Cross-examination.

Ques. 1. What is the character of the dividing ridge between Russian river and Dry creek, below the cañon, and above Fitch's line; is it rolling hills, or mountains, or sierras?

Ans. 1. It is a ridge of mountains and rolling hills above the Peña ranch.

Ques. 2. Did you stop at the house of Peña on your visit to Dry creek, in 1846?

Ans. 2. We called as we passed.

Ques. 3. How long were you in Russian River valley, upon the occasion referred to in hunting Spaniards?

Ans. 3. I don't recollect how long we were; we staid one or
280 two nights.

Ques. 4. Where did you stay during those one or two nights?

Ans. 4. One night at Fernando Feliz's, above the cañon. We camped out the next night somewhere below the cañon.

Ques. 5. How far below the cañon?

Ans. 5. As near as I can recollect some 4 or 5 miles.

Ques. 6. Do you recollect the point at which you camped?

Ans. 6. I do not.

Ques. 7. In passing down did you make any other halt than at the places where you passed the night?

Ans. 7. I do not recollect any other place but Fitch's.

Ques. 8. How far is the present residence of Dr. Ely, to which you have heretofore referred, above or north of Fitch's northern line?

Ans. 8. I should think about 2 or 3 miles.

Re-direct examination.

Ques. 280. Have you or have you not been in the habit of
281 passing through those valleys since the time you speak of in 1846?

Ans. I have; I have passed through the valley every year, with the exception, I think, of 1852, frequently each year.

Ques. Where did you first see the house or sign of cultivation at the place where Dr. Ely now lives?

(Objected to as irrelevant.)

Ans. I cannot recollect. It is since 1848. I cannot recollect at what time.

Ques. By whom was the first impovement or cultivation you saw there made?

Ans. By Dr. Ely.

Cross-examination.

Ques. Did you ever see, in the vicinity of Dr. Ely's present residence, the ruins of an adobe or other house?

Ans. There are adobes there.
Ques. Are they old adobes?
Ans. I never paid any attention to them. I cannot say.

his
EMSLEY + ELLIOTT.
mark.

Subscribed and sworn to before me this 7 Feb'y, 1861.

CUTLER McALLISTER,
Master in Equity.

Endorsed: Filed April 22d, 1861.

CUTLER McALLISTER, *Clerk.*

282 *Deposition of Jno. C. Hays, compl'nts witness.*

Circuit court of the United States for the districts of California, in and for the northern district.

THE UNITED STATES
vs.
THE HEIRS OF PEÑA, deceased.

SAN FRANCISCO, 13*th February*, 1861.

Be it remembered, that on this 13th day of Feb'y, A. D. 1861, personally appeared before me, Cutler McAllister master in equity, appointed by the circuit court of the United States for the districts of California, John C. Hays to testify, and the truth to say on the part and behalf of the def'ts, in a certain suit or matter of controversy now depending and undetermined in the above-named court, between the above-named parties.

And the said witness being of lawful age, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, did thereupon depose, testify, and say, as follows, viz:

Present: R. A. Thompson, for U. S. Att'y; J. J. Williams, for def'ts.

Questions by

Ques. 1. What is your name, age, place of residence, and occupation?

283 Ans. 1. John C. Hays; 45; Alameda county; formerly surveyor general.

Ques. 2. Have you since you ceased to fill the office of surveyor general, executed any surveys as deputy surveyor for J. W. Mandeville, the present surveyor general?

Ans. 2. Yes.

Ques. 3. Look at the plat now shown you, marked Exhibit G, No. 2, in the bill filed in this case, and state what it represents.

Ans. 3. It represents a survey of Tzabaco rancho, finally confirmed to the heirs of Peña. It was made by myself in July, 1858, under instructions from the surveyor general.

Ques. 4. Look at the paper marked Exhibit G, to the bill filed in this case, and state what it represents.

Ans. 4. It is the instructions issued to me by the surveyor general for the survey of the said rancho.

Ques. 5. State whether or not, under those instructions and the documents therein copied and referred to for your guidance, you could have extended the northeastern boundary of the said
284 tract as represented on said Exhibit G, No. 2, so as to have included any portion of the Russian River valley.

(Question objected to as irrelevant and incompetent.)

Ans. 5. No.

Ques. 6. Which is the widest valley, the valley of Russian river or the valley Tzabaco, otherwise called the valley of Dry creek?

Ans. 6. Russian River valley.

Ques. 7. What, as near as you can judge, is the difference of the width?

Ans. 7. I should think it was twice as wide, as well as I can recollect.

Ques. 8. In what manner is Russian River valley separated from Dry Creek valley?

Ans. 8. By a range of hills.

Ques. 9. What is the character of that range of hills, the width and height, whether it is a well-defined range or separate hills?

Ans. 9. It is a well-defined range of hills. I don't recollect the general width, I should think 1½ or two miles across. It is a
285 tolerable high range; the hills are pretty high—high and distinct range of hills. I do not consider myself a good judge of the height.

Ques. 10. What is the character of the country forming the southwest border of the valley of Tzabaco or Dry creek?

Ans. 10. They are high, and most of them brushy hills, or mountains, you may call them.

Ques. 11. In running the southwest boundary of the ranch, did you run the line along the summit of the range of hills or mountains on that side, or on what part of said range did you run it?

Ans. 11. I did not run on the summit, but along what was said to be the foot-hills; sometimes on the side of the hill, and sometimes on the foot, as near as I could run along the foot of the mountain, making the mountains the boundary.

Ques. 12. Do you recollect what quantity of land was embraced in the survey you made?

Ans. 12. I do not recollect exactly, but about two or three leagues, I think.

Ques. 13. Could you not, in making said survey, by extend-
286 ing the southwest boundary to the summit, or some intermediate point between the foot and the summit of the hills bordering the valley of Tzabaco or Dry creek on the southwest that included in said survey the quantity of four leagues.

Ans. 13. From my recollection, if I could have gone to the top of them, I could have included 4 leagues, perhaps more, for they looked very high?

Ques. 14. Is the range of hills which separate Russian river from Tzabaco valley intersected at any points by low gaps, where they may be crossed with any facility?

Ans. 14. I recollect one place where the road crossed over; I do not recollect any other; there is no other.

Ques. 15. Did you examine the country on Dry creek, above the upper or western line of the ranch surveyed by you?

Ans. 15. I examined it for some distance above, perhaps half a mile, but I made up my mind that that formed the cañon.

Ques. 16. Do you or not know that the above said cañon spoken of as situated where the upper or western line crosses said valley,
287 that the valley again widens out, and, with the adjoining foothills, furnishes good grazing for stock?

(Objected to as irrelevant.)

Ans. 16. From appearances the valley appears to widen out. I did not go to see whether it was good grazing ground or not.

Ques. 17. Do you or not know whether the survey returned by you was approved by the surveyor general?

(Question objected to as incompetent.)

Ans. 17. I don't know. My impression was at that time that it was approved; I may have been mistaken.

Ques. 18. In what manner did you derive that impression?

(Objected to as irrelevant and incompetent.)

Ans. 18. In a conversation I had with the surveyor general.

Cross-examination.

Ques. 1. In making your survey, what documents did you have for your guidance referred to in your answer 5?

Ans. 1. I don't recollect what papers I had; but I had all the papers that were considered necessary and referred to in the instructions; one of them was the diseño.

288 Ques. 2. Did not that diseño include Russian River valley?

Ans. 2. Yes; it included Russian River valley.

Ques. 3. Did you have a copy of the record of juridical possession and map of the Sotoyome ranch?

Ans. 3. A copy of the records were not furnished me; I think not. I only had such papers given me at the office.

Ques. 4. Did you have a copy of the expediente of Berreyes for the Musalacon ranch, and the map contained in it?

Ans. 4. I don't think I did.

Ques. 5. Did you not have and were you not governed by, in your survey, chiefly the deposition of M. V. Vallejo?

Ans. 5. I recollect having that, and of course I was a good deal governed by it, with connection with other things.

Ques. 6. How far do the southern, western, and northwestern lines of your survey correspond with the southern, western, and northwestern lines of the official survey?

289 Ans. 6. I saw no marks where the southern line was run on the official survey. I think the other lines specified correspond pretty nearly. I saw stakes occasionly as I run along. I think they correspond pretty closely.

Re-direct examination.

Ques. 1. Does the southern line of your survey correspond with the line of any adjoining rancho, or is it intended to correspond to the line of any other ranch?

Ans. 1. It extends from Fitch's northwest corner near the foot of the hills bordering the Dry Creek valley, on the southwest to the top of the hills dividing Dry Creek valley from Russian River valley, and intended to be run on the Fitch line. I think it was, as I saw the stakes. The Fitch line was extended on across said hills and across Russian River valley.

Ques. 2. Look at the deseño now shown you, forming part of Exhibit A, filed in the bill in this case, and state whether it is a copy of the same map referred to in your instructions which you say you had to guide you in part in making the survey.

Ans. 2. Yes, it is.

Ques. 3. Which of the two valleys, that of Tzabaco or Dry
290 Creek or Russian River, is represented as the widest valley? (Objected to, as the map is the best evidence of that fact.)

Ans. 3. The Tzabaco valley, as represented on the map.

Ques. 4. Look at the scale on said map, taking the distance herein represesented as 5,000 varas as one league; state whether or not the lands represented on the deseño as lying within the Tzabaco valley, according to said scale, would contain the quantity of four square leagues.

Ans. 4. It would contain four leagues.

Ques. 5. Do you know whether the southwestern line of the official survey, returned in this case, extends as far as the Dry Creek valley as the survey made by you?

Ans. 5. I don't think it does. I can't tell. Judging from the maps I don't think it does—not very much further.

Cross-examination resumed.

Ques. 1. Did not your survey test conclusively that there was nothing like four leagues of land in Tzabaco valley?

Ans. 1. Yes, certainly. The way I made it it did.

291 Ques. 2. In making your survey, did you not survey up to the hills indicated on the original deseño just referred to by you, and on the north of said deseño?

Ans. 2. I did survey up to what I considered to be those hills.

Re-direct examination resumed.

Ques. 1. Did you, in making your survey, run as much as four leagues up Dry creek from the Fitch line?

Ans. 1. I did not run four leagues.

Ques. 2. What is the scale of your map?

Ans. 2. I think it is about the scale of the official map.

JOHN C. HAYS.

Subscribed and sworn to before me this 13 Feb'y, A. D. 1861.
CUTLER McALLISTER,
Master in Equity.

Endorsed: Filed April 22d, 1861.
CUTLER McALLISTER, *Clerk.*

292 *Deposition of J. G. Dow, compl'n't's witness.*

Circuit court of the United States for the districts of California, in and for the northern district.

THE UNITED STATES
vs.
THE HEIRS OF PENA, deceased.

SAN FRANCISCO, 13 *February*, 1861.

Be it remembered, that on this 13 day of Feb'y, A. D. 1861, personally appeared before me, Cutler McAllister, master in equity, appointed by the circuit court of the United States for the districts of California, J. G. Dow, to testify and the truth to say, on the part and behalf of the complainants, in a certain suit or matter of controversy now depending and undetermined in the above court, between the above-named parties, and the said witness being of lawful age, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows, viz:

Present: H. P. Sweny, for U. S. dist. att'y; J. J. Williams, for def'ts.

Questions by U. S. att'y.

Ques. 1. What is your name, age, place of residence, and occupation?

293 Ans. 1. J. G. Dow; 35; near Healdsburg, Sonoma county; farmer.

Ques. 2. Witness sworn to answer questions by *voir dire*.

Ques. 2. Have you any interest in the result of this suit?

Ans. 2. I have not.

Ques. 3. Do you occupy any portion of the land included within the bounds of the patent in controversy here?

Ans. 3. I do not.

Examination in chief resumed.

Ques. 4. How long have you resided in Sonoma county?

Ans. 4. Twelve years.

Ques. 5. Do you know the country known as the Russian River valley, lying between the northern line of the Fitch ranch and the space known as the Russian River cañon, about 12 or 13 miles above said ranch; and if so, how long have you known it?

Ans. 5. I do; I have known it since the fall of 1848?

Ques. 6. Have you been familiar with that portion of the valley since?

Ans. 6. I have.

294 Ques. 7. When you were first there, in the fall of 1848, did you observe any cattle ranging in the valley above the Fitch line; and if so, to whom did they belong?

Ans. 7. I did notice cattle there; all that I saw were Fitch's cattle, with the Fitch brand.

Ques. 8. How long were you in that portion of the valley in 1848?

Ans. 8. Five or six days.

Ques. 9. Who was in charge, taking care of the cattle you saw then?

Ans. 9. Moses Carson.

Ques. 10. In whose employ was Moses Carson at that time?

Ans. 10. Mr. Fitch's.

Ques. 11. Did you observe the cattle of Fitch subsequently, and up to what time did they continue to range there?

Ans. 11. I was there in the spring of 1849, and saw the cattle there, and again in 1850.

Ques. 12. How far above the Fitch line did you observe the Fitch cattle ranging?

295 Ans. 12. In spring of 1849 I saw them seven miles above the Fitch line as now established.

Ques. 13. What particular circumstance called your attention to the fact that you saw the cattle seven miles above?

(All the foregoing deposition, both questions and answers, from question 7 inclusive, objected to as irrelevant.)

Ans. 13. There was a party of us camped there. We had been authorized by Mr. Carson to kill our meat out of their cattle on the ranch if we needed it, and we did kill one with Fitch's brand on it at that place.

(Same objection.)

Ques. 14. Were you acquainted with German Peña, or his brothers, or either of them; and if so, at what time did you make their acquaintance?

Ans. 14. I never was intimately acquainted with any of the family; I think I know them all by sight.

(Same objection.)

Ques. 15. When did you first see them?

Ans. 15. I saw some of the family in the fall of 1848, and the balance in 1850.

(Same objection.)

296 Ques. 16. Where did they reside when yon knew them in 1848?

Ans. 16. In what is called Dry Creek valley.

(Same objection.)

Ques. 17. Did the Peña's, when you knew them in 1848, possess any cattle; and if so, what quantity?

Ans. 17. In 1848 I don't think I knew anything about the cattle; in the spring of 1849 I became acquainted with their stock.

(Same objection.)

Ques. 18. State what quantity they had at that time.

Ans. 18. About 100 head, I should judge.

(Same objection.)

Ques. 19. Did you know the brand of the Peña cattle?

Ans. 19. I did at that time.

(Same objection.)

Ques. 20. Did you at that time, or at any time before or afterwards, observe any cattle with the Peña brand in Russian River valley?

Ans. 20. I did not.

(Same objection.)

Ques. 21. State if you know where the Peña cattle ranged.

297 Ans. 21. In Dry Creek valley and the hills next to Dry Creek valley.

(Same objection.)

Ques. 22. In what were you engaged in 1848 and 1849 in your visits to Russian River valley?

Ans. 22. Collecting government horses. I was collecting the horses that were branded by Frémont and his party. As they needed horses they branded them. They were paid for by the government. I was in the quartermaster's department, and was sent out to collect them.

(Same objection.)

Cross-examination.

Ques. 1. Do you know where Dr. Ely now lives?

Ans. 1. I do.

Ques. 2. Upon the occasion of either of your visits to that neighborhood did you ever observe an old Mexican adobe house, or the ruins of one?

(Question objected to as new matter.)

Ans. 2. I recollect an old adobe house; I don't know whether it was built by Californians—Mexicans. It must have been built a good many years.

298 Ques. 3. Were you personally acquainted with German Peña.

Ans. 3. I can't say that I was; I knew him by sight.

Ques. 4. When and where did you first see him?

Ans. 4. I saw him at a rodeo of Fitch's cattle on what is called the big plains, in Russian River valley, in 1848.

Re-direct examination.

Ques. 1. Could the old adobe house of which you have spoken be seen from the trail that passed up the Russian River valley?

Ans. 1. I think not from the main trail.

Ques. 2. Where is that big plain situated with reference to Fitch's northern line.

Ans. 2. It is the north end of the Fitch ranch.

J. G. DOW.

Subscribed and sworn to before me this 13 Feb'y, A. D. 1861.
CUTLER McALLISTER,
Master in Equity.

Endorsed: Filed April 22d, 1861.
CUTLER McALLISTER, *Clerk.*

299 *Order setting cause for May* 10, '61.

At an extra term of the circuit court of the United States of America for the districts of California, in and for the northern district, held at the court-house in the city of San Francisco on Saturday, the 4th day of May, in the year of our Lord one thousand eight hundred and sixty-one.

Present: The honorable M. Hall McAllister, judge of said court.

THE UNITED STATES
vs.
THE HEIRS OF G. J. PEÑA, dec'd. } In equity.

And now, at this day, on motion of J. J. Williams, esq., sol. for def'ts, it is ordered, adjudged, and decreed that this cause be set for hearing on Friday next, May 10, 1861.

Endorsed: Filed this 4th day of May, 1861.
CUTLER McALLISTER, *Clerk.*

300 *Order setting cause for May* 17, '61.

At an extra term of the circuit court of the United States of America for the districts of California, in and for the northern district, held at the court-house in the city of San Francisco, on Thursday, the 9th day of May, in the year of our Lord one thousand eight hundred and sixty-one.

Present: The honorable M. H. McAllister, judge of said court.

THE UNITED STATES
vs.
THE HEIRS OF J. G. PEÑA, dec'd. } In equity.

And now, at this day, came the parties to the suit, by their respective attorneys, and on motion of J. J. Williams, solicitor for def'ts, and with consent of solicitor for complainant, it is ordered that this cause be set for argument for Friday, May 17, 1861.

Endorsed: Filed this 9th day of May, 1861.
CUTLER McALLISTER, *Clerk.*

301 *Order transferring cause from former circuit court.*

At a regular term of the circuit court of the United States of America in and for the northern district of California, held at the court-house in the city of San Francisco, on Monday, the 1st day of June, in the year of our Lord one thousand eight hundred and sixty-three.

Present: The honorable Ogden Hoffman, U. S. district judge.

THE UNITED STATES
v.
THE HEIRS OF J. G. PENA, dec'd, *et al.* } In equity.

And now, at this day, it is ordered by the court, that in accordance with an act of Congress entitled "An act to provide circuit courts for the districts of California and Oregon, and for other purposes," approved March 3d, 1863, all actions, suits, prosecutions, causes, pleas, process, and other proceedings relative to any cause, civil or criminal, heretofore pending in or returnable to the circuit court of the United States for the districts of California, in and for the northern district be, and they are hereby, respectively transferred, made returnable, and continued to this court.

Endorsed: Filed 20th day of July, 1863.
GEORGE C. GORHAM, *Clerk*,
By HYDE, *D. C.*

302 *Order setting cause for July* 29, 1863.

At a regular term of the circuit court of the United States of America in and for the northern district of California, held at the court-house in the city of San Francisco, on Monday, the 20th day of July, in the year of our Lord one thousand eight hundred and sixty-three.

Present: The honorable Stephen J. Field, associate justice of the U. S. Supreme Court.

THE UNITED STATES
vs.
HEIRS OF J. G. PENA, dec'd, *et al.* } In equity.

And now, at this day, this cause being called in its regular order on the calendar, on motion of J. J. Williams, esq., of counsel for defendants, it is ordered that said cause be set for Wednesday, July 29th, 1863.

Endorsed: Filed this 20th day of July, 1863.
GEO. C. GORHAM, *Clerk*,
Pr. HYDE, *D. C.*

303 *Notice of trial.*

In the circuit court of the United States for the districts of California, northern district.

THE UNITED STATES
v.
WILLIAM FITCH *et al.*, HEIRS OF J. G. PEÑA,
J. B. FRISBIE *et al.*, defendants. } In equity.

Please take notice that this cause has been specially set for hearing by the court on July 29th, (Wednesday,) 1863, at the opening of the

court of that day, at which time, at the court-room, in San Francisco, the defendants will bring the same to argument and hearing.

Yours, &c.,

THOMSON AND WILLIAMS,
Sol'rs for Defendants.

To WM. H. SHARP, Esq.,
U. S. District Attorney, Northern D. of California.
R. AUGUSTUS THOMPSON, Esq.
H. P. IRVING, Esq.
TULLY R. WISE, Esq.

Personal service of a copy above on the undersigned is admitted. July 23d, 1863.

R. AUG. THOMPSON,
Of Counsel for United States.

Endorsed: Filed July 29th, 1863.

GEORGE C. GORHAM, *Clerk.*
Per HYDE, *D. C.*

304 *Stipulation as to the admission of certain depositions, &c.*

In the circuit court of the United States in and for the northern district of California.

THE UNITED STATES
v.
THE HEIRS OF J. G. PEÑA, dec'd, *et als.* } In equity.

It is admitted in this case that the depositions of John C. Hays, of Emsley Elliott, and of Patrick McChristian were taken on behalf of the United States and not on behalf of defendants, and that the return of Cutler McAllister, master in equity, that said witnesses were sworn and examined on the part and behalf of the defendants, is a mistake, and it is agreed that said depositions shall be held and regarded as taken on the part of the United States notwithstanding said return, and it is agreed that the deed to Patterson may now be filed.

THOMPSON & IRVING,
Att'ys for Compl'ts.
WM. H. SHARP, *U. S. Att'y.*

Endorsed: Filed July 29th, 1863.

G. C. GORHAM, *Clerk.*

305 *Deed from Jno. B. Frisbie to W. H. Patterson.—Defend't's evidence.*

This indenture, made the third day of August, (1859) in the year of our Lord one thousand eight hundred and fifty-nine, between John B. Frisbie, of Vallejo, Solano Co., California, party of the first part, and William H. Patterson, of San Francisco, California, party of the second part, witnesseth: That the said party of the first part, for and

in consideration of the sum of sixteen thousand dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, and conveyed, and by these presents doth grant, bargain, sell, and convey unto to the said party of the second part and to his heirs and assigns forever, all the equal undivided half of all right, title, interest, and estate the party of the first part ever had, now does or may hereafter own of, in, and to that certain rancho or land situate in the county of Sonoma, bounding on the southerly by the rancho Sotoyome, on the westerly by the sierras
306 west of the creek, on the easterly by the sierras on the east side of Russian river, on the north by Musalacon and the head of Dry creek valley, and being known by the name of the rancho Tzabaco, the original title-papers being on file in case No. 298 before the board of U. S. land commissioners for California, to which title-papers, and the diseño accompanying the same, reference is made for a more particular description, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also, all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said part of the first part of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances. This conveyance being accepted by the said Patterson upon the express agreement that he will unite with the said Frisbie in carrying out and performing his bond or covenant with Francisco Peña and others, to convey to them eight hundred acres of land of an average quality of the whole
307 rancho; which agreement, bond, or covenant is dated A. D. 1858; to have and to hold all and singular the above-mentioned and described premises, together with the appurtenances, unto the said party of the second part and his assigns forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

JOHN B. FRISBIE. [SEAL.]

Signed, sealed, and delivered in the presence of—
SAMUEL HERMAN.

Recorded Aug. 8, 1859, at five o'clock, p. m., in book No. 9 of deeds, Sonoma county record, on pages 113, &c.

JOEL MILLEB, *County Recorder.*
By ADAM SHANE, *Deputy.*

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On this fourth day of August, A. D. one thousand eight hundred and fifty nine, before me, Samuel Hermann, a notary public in and for said city and county, duly commissioned and sworn, personally appeared the within named John B. Frisbie, whose name is subscribed

to the annexed instrument as a party thereto, personally known to me to be the individual described in, and who executed, the said annexed instrument, and the said John B. Frisbie acknowledged to me that he executed the same freely and voluntarily, and for the uses
308 purposes therein mentioned.

[SEAL.] In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

SAM'L HERMANN,
Notary Public.

Endorsed: Rec'd for record, per Wells, Fargo & Co.'s express, Aug. 6th, 1859, at 9½ o'clock, a. m.

JOEL MILLER,
Co. Recorder, Sonoma County, California.

Endorsed: Filed July 29, '63.

G. C. GORHAM, *Clerk.*

309 *Proceedings in court on hearing.*

At a regular term of the circuit court of the United States of America, in and for the northern district of California, held at the court-house in the city of San Francisco, on Wednesday the 29th day of July, in the year of our Lord one thousand eight hundred and sixty-three.

Present: The honorable Stephen J. Field, associate justice of the U. S. Supreme Court.

THE UNITED STATES
vs.
J. JESUS PEÑA, and others,
HEIRS OF JOSÈ G. PEÑA *et al.*
} In equity.

And now at this day, this cause having heretofore been set for hearing and argument by order of the court for this day, and the complainant appearing by Wm. H. Sharp, esq., United States district attorney for the northern district of California, and the defendants by their counsel William H. Patterson, and on reading and filing
310 notice of said hearing and admission of due service thereof by R. Augustus Thompson, esq., special counsel of the United States, and on motion of defendants' counsel, it is ordered that this cause be submitted on the pleadings and proofs taken therein, and on briefs to be filed by defendants within 48 hours, and by the United States and the counsel thereof, by Saturday the 1st day of August, 1863, at ten o'clock a. m.

Endorsed: Filed this 29th day of July, 1863.

GEO. C. GORHAM, *Clerk,*
Per HYDE, *D. C.*

311 *Order for a decree.*

At a regular term of the circuit court of the United States of America in and for the northern district of California, held at the court-house in the city of San Francisco, on Monday, the 19th day of October, in the year of our Lord one thousand eight hundred and sixty three.

Present: The honorable Stephen J. Field, associate justice of the U. S. Supreme Court.

THE UNITED STATES
vs.
THE HEIRS OF J. G. PEÑA, deceased, and others. } In equity.

And now, at this day, this cause having heretofore been duly submitted and due deliberation had in the premises, it is ordered that a decree be entered herein in favor of the defendants, and that the bill be dismissed.

Endorsed: Filed this 19th day of October, 1863.

GEO. C. GORHAM, *Clerk*,
Per HYDE, *D. C.*

312 *Decree.*

In the circuit court of the United States for the districts of California, northern district thereof.

THE UNITED STATES
vs.
J. JESUS PEÑA, ANTONIO PEÑA, FRANCISCO PEÑA, Clara Peña, William Fitch, John B. Frisbie, José Leandro Luco, Blas Peña, and William H. Patterson. } In chancery.

This cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, the court being of opinion that the evidence does not sustain the allegations of the bill, and that the survey and patent in said bill mentioned were not procured by fraud or mistake, but are valid and binding upon the United States; and that the United States has no interest, right, or title in or to the land in said bill, survey, and patent described; and that said complainants' bill is without merits. It is therefore now ordered, adjudged, and decreed, and the court doth hereby order, adjudge, and decree, that said complainants' bill be, and the same is hereby, dismissed for want of merits.

FIELD, *J.*

Dated at San Francisco, Oct. 19, 1863.

Endorsed: Filed Oct. 19, '63.

G. C. GORHAM, *Clerk.*

313 *Order allowing appeal on behalf of U. S.*

At a regular term of the circuit court of the United States of America, in and for the northern district of California, held at the court-house in the city of San Francisco, on Thursday, the 5th day of November, in the year of our Lord one thousand eight hundred and sixty-three.

Present: The honorable Ogden Hoffman, U. S. district judge.

THE UNITED STATES
vs.
THE HEIRS OF J. G PEÑA, deceased, and others. } In equity.

And now, at this day, on motion of William H. Sharp, esq., U. S. attorney, William H. Patterson, esq., of counsel for defendants, being present in court and consenting thereto, it is ordered that an appeal from the final decision of this court, rendered in said cause at the present term, be, and the same is hereby, granted; and that a certified transcript of the pleadings, evidence, depositions, and proceedings in said cause be sent to the Supreme Court of the United States without delay; and further, that this order be made *nunc pro tunc*, as of the day said decision was rendered.

Endorsed: Filed this 5th day of Nov'r, 1863.
GEO. C. GORHAM, *Clerk*,
Per HYDE, *D. C.*

314 In the circuit court of the United States in and for the northern district of California.

THE UNITED STATES, complailants,
vs.
THE HEIRS OF J. G. PEÑA, deceased, and others, defendants. } In equity.

NORTHERN DISTRICT OF CALIFORNIA,
City and County of San Francisco, ss:

I, Henry C. Hyde, clerk of the circuit court of the United States in and for the northern district of California, do hereby certify that the foregoing three hundred and thirteen (313) pages contain a full, correct, and faithful transcript of the record and proceedings had in the above-entitled cause, together with all the evidence adduced therein, duly compared and examined.

In witness whereof, I have hereunto set my hand and affixed the [SEAL.] seal of said circuit court this 10th day of December, in the year A. D. one thousand eight hundred and sixty-three.

HENRY C. HYDE,
Clerk U. S. Cir. C't, North. Dist. Cal'a.